

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

ASHLEY DIAMOND,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.
v.	:	5:20-cv-00453-MTT
	:	
TIMOTHY WARD, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**CONSOLIDATED RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION FOR A
PRELIMINARY INJUNCTION AND MOTION FOR PROTECTIVE ORDER**

Defendants Timothy Ward, Sharon Lewis, Javel Jackson, Ahmed Holt, Robert Toole, Benjamin Ford, Jack Sauls, Brooks Benton, Grace Atchison, Lachesha Smith, and Rodney Jackson (collectively, “Defendants”), through counsel, submit this consolidated response in opposition to Plaintiff’s Motion for a Preliminary Injunction and motion for protective order.

INTRODUCTION

Plaintiff Ashley Diamond, a male-to-female transgender state prisoner, filed her initial complaint on November 23, 2020, alleging that Defendants, all current or former officers or officials of the Georgia Department of Corrections (“GDC”), failed to provide her with constitutionally adequate medical care and failed to take reasonable steps to protect her from sexual assault by housing her in a men’s facility. Defendants appeared and filed an answer on February 16, 2021. That same day, February 16, 2021, Diamond amended her complaint, and Defendants answered the amended complaint on March 9, 2021. At no point in all of this extended time period did Diamond move for temporary or preliminary injunctive relief. Now, many months after the initial complaint was filed, Diamond has filed a motion for preliminary

injunctive relief that in essence seeks the entry of summary judgment on the merits of her claims in this complex civil rights action before discovery has even commenced, let alone been completed.

Diamond's motion should be denied because she is unable to satisfy each of the four prerequisites for preliminary injunctive relief. As shown by the declarations and materials collected on an expedited basis and submitted herewith, the alleged "assaults" that form the basis of her motion occurred, if at all, too far in the past to reasonably form the basis for emergency injunctive relief. The most extreme of the alleged "assaults" occurred before (and some long before) Diamond filed her initial complaint. Moreover, whether or not these alleged "assaults" occurred at all is disputed. Before a determination is made on disputed facts or the credibility of witnesses surrounding these disputed facts, discovery should be permitted in this case just as in any other case.

The declarations and materials submitted herewith also show that Diamond has received and continues to receive a course of treatment for her gender dysphoria and other conditions as recommended and determined by her care providers, including counseling, psychiatric medication, and hormone therapy. While further discovery is needed to determine whether Diamond's other requests—including medicated hair removal products, gender expressive commissary items, or placement in a women's facility—are medically necessary or merely Diamond's stated preference, it is clear based on the level of care she has received that Defendants have not knowingly disregarded her medical or mental health needs.

As the Court is aware, shortly before the pending motions were filed, counsel for the parties met and conferred and presented a planning report that called for nine months of discovery, including expert witness disclosures and depositions at the end of that time period.

As the planning report and the agreed-upon time periods fairly reflect, this is a complex case with complex factual and legal issues. No party should be put to the burden of proving its case without the benefit of discovery, particularly discovery that has been agreed to. Resolution of the disputed issues presented in Diamond's amended complaint is a task best informed by the discovery process and ultimately left to the consideration of a jury. For these and other reasons as set forth herein, Diamond's motions should be denied and the parties permitted to complete discovery before any relief is granted in this case.

REQUESTED RELIEF

By her motion for a preliminary injunction, Diamond requests the following relief:

- An order directing Defendants Ward, Lewis, Jackson, Toole, Atchison, Holt, and Benton "to transfer Ms. Diamond to a female facility for safety purposes for the remainder of her time in custody." ECF No. 50 at 1;
- An order directing the same Defendants "to allow Ms. Diamond to shower privately." *Id.*;
- An order enjoining the same Defendants "from using male correctional officers to conduct strip searches of Ms. Diamond, absent exigent circumstances." *Id.*;
- An order directing Defendants Lewis, Jackson, and Sauls "to provide Ms. Diamond with medically necessary treatment for gender dysphoria, including but not limited to consistent and therapeutic doses of hormone therapy, access to permanent body hair removal, and gender-affirming care including access to female canteen items, accommodations for female hairstyle and grooming standards, or, alternatively, a transfer to a female facility." *Id.*; and
- An injunction "enjoining Defendants from enforcing the De Facto Placement Ban and any other policies, customs, or practices that have served as a moving force behind their actions denying Ms. Diamond protection from sexual assault or adequate gender dysphoria treatment." *Id.*

In addition to the motion for a preliminary injunction, Diamond has also filed a motion for a protective order, which upon close reading is an additional request for injunctive relief seeking the following:

- An order “enjoining Defendants and their agents from retaliating against Ms. Diamond and John Doe, or any other witnesses, including GDC staff.” ECF No. 51 at 1; and
- An order “enjoining Defendants and their agents from taking any adverse action against Ms. Diamond based on the altered designations of her as a PREA aggressor and security threat group member.”¹ *Id.*

For the reasons that follow, Diamond’s motions for preliminary injunctive relief are due to be denied.

ARGUMENT AND AUTHORITIES

I. The standard for preliminary injunctive relief.

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The primary purpose and “chief function” of such relief “is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated.” *SunTrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1265 (11th Cir. 2001) (quoting *Ne. Fla. Chapter of Ass’s of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1284 (11th Cir. 1990)). “Preserving the court’s ability to render a meaningful decision after a trial on the merits is the primary justification for granting a preliminary injunction.” *Redding v. Fanning*, 2015 U.S. Dist. LEXIS 139520, at *2 (M.D. Ga. Oct. 14, 2015) (Treadwell, J.) (quoting *Campos v. I.N.S.*, 70 F. Supp. 2d 1296, 1307 (S.D. Fla. 1998)).

¹ Notably, Diamond’s requests for an order directing Defendants to provide her with “medically necessary treatment” and enjoining them from retaliating against her are in essence a request for prison officials to comply with their obligations under the First and Eighth Amendments. *See Estelle v. Gamble*, 429 U.S. 97, 102–103 (1976); *Farrow v. West*, 320 F.3d 1235, 1248 (11th Cir. 2003). The Eleventh Circuit has repeatedly held that similar “obey the law” injunctions do not satisfy the specificity requirements of Fed. R. Civ. P. 65 and are incapable of enforcement. *See Burton v. City of Belle Glade*, 178 F.3d 1175, 1201 (11th Cir. 1999); *Payne v. Travenol Labs., Inc.*, 565 F.2d 895, 898 (5th Cir. 1978). More importantly, there is no retaliation in this case, and the requested relief as to retaliation exceeds the relief sought in the amended complaint.

To be eligible for preliminary injunctive relief, a “movant must clearly carry the burden of persuasion” as to each of the four prerequisites, which are: (1) a substantial likelihood of success on the merits of the underlying case; (2) irreparable harm to the movant in the absence of an injunction; (3) the threatened harm to the movant would exceed any harm suffered by the non-moving party if the injunction were issued; and (4) if issued, an injunction would not disserve the public interest. *N. Am. Med. Corp. v. Axiom Worldwide, Inc.*, 522 F.3d 1211, 1217 (11th Cir. 2008); *Four Seasons Hotels and Resorts, B.V. v. Consorcio Barr, S.A.*, 320 F.3d 1205, 1210 (11th Cir. 2003); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). “In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter*, 555 U.S. at 24.

“When a preliminary injunction is sought to force another party to act, rather than simply to maintain the status quo, it becomes a ‘mandatory or affirmative injunction.’” *Exhibitors Poster Exch. v. Nat’l Screen Serv. Corp.*, 441 F.2d 560, 561 (5th Cir. 1971).² “A mandatory injunction requires a defendant to do some positive act, as opposed to a standard preliminary injunction where a defendant is ordered to stop doing something or not to do something.” *Dantzler, Inc. v. Hubert Moore Luber Co.*, 2013 U.S. Dist. LEXIS 78664, at *3–4 (M.D. Ga. June 5, 2013). A request for a mandatory injunction, “which goes well beyond simply maintaining the status quo *pende lite*, is particularly disfavored.” *Martinez v. Matthews*, 544 F.2d 1233, 1243 (5th Cir. 1976). Thus, when the request is one for a mandatory injunction, “the burden on the moving party increases.” *Exhibitors Poster Exch.*, 441 F.2d at 561; *see also Redding*, 2015 U.S. Dist. LEXIS 139520, at *2 (“[W]hen the moving party is seeking to have the

² The Eleventh Circuit accepts as binding precedent the decisions of the former Fifth Circuit rendered prior to October 1, 1981. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

opposing party perform an affirmative act, the burden is even higher.”); *Dantzler, Inc.*, 2013 U.S. Dist. LEXIS 78664, at *3 (“Plaintiff’s request must be considered by the Court with greater scrutiny because the burden for a movant requesting a mandatory injunction is higher than for a movant requesting a standard preliminary injunction.”). This Court has held that “[a] mandatory injunction . . . especially at the preliminary stage of proceedings, should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party.” *Redding*, 2015 U.S. Dist. LEXIS 139520, at *2 (quoting *Miami Beach Fed. Sav. & Loan Ass’n v. Callander*, 256 F.2d 410, 415 (5th Cir. 1958)).

II. Diamond’s motion fails to meet the standard for preliminary injunctive relief.

A. Diamond has not established a likelihood of success on the merits.

To satisfy the first prerequisite for preliminary injunctive relief, the movant must demonstrate that there is a *substantial likelihood* of success on the merits of their underlying claims. *See Cable Holdings of Battlefield, Inc. v. Cooke*, 764 F.2d 1466, 1474 (11th Cir. 1985). The case law of this circuit “uniformly require[s] a finding of *substantial likelihood* of success on the merits before injunctive relief may be provided.” *Pittman v. Cole*, 267 F.3d 1269, 1292 (11th Cir. 2001) (emphasis added). “[W]hen a plaintiff fails to establish a *substantial likelihood* of success on the merits, a court does not need to even consider the remaining three prerequisites of a preliminary injunction.” *Id.* (citing *Church of City of Huntsville*, 30 F.3d 1332, 1342–47 (11th Cir. 1994)).

1. Diamond has not established as substantial likelihood of success on the merits of her Eighth Amendment Failure to Protect Claim (Counts I and IV).

Section 1983 provides a cause of action for damages against every person who, acting under color of state law, deprives another of “rights, privileges, or immunities, secured by the Constitution and laws” of the United States. 42 U.S.C. § 1983. The statute “is not itself a source

of substantive rights,” but instead provides a “method for vindicating federal rights elsewhere conferred.” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144, n.3 (1979)). When a court considers a § 1983 claim, it must first identify the specific right allegedly infringed and then determine the validity of the claim “by reference to the specific constitutional standard which governs that right.” *Albright*, 510 U.S. at 271; *Graham v. Connor*, 490 U.S. 386, 394 (1989).

In the context of a failure to protect claim, the Supreme Court has said that an “official’s ‘deliberate indifference’ to a substantial risk of serious harm . . . violates the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S. 825, 828 (1994); accord *Carter v. Galloway*, 352 F.3d 1346, 1349 (11th Cir. 2003). Inherent in this standard is the recognition that facility officials have a duty to protect detainees from violence at the hands of other detainees, *see Farmer*, 511 U.S. at 833; but also that “it is not . . . every injury suffered by one inmate at the hands of another that translates into a constitutional liability for prison officials responsible for the victim’s safety,” *id.* at 834.

To violate the Eighth Amendment, an official must have a “sufficiently culpable state of mind.” *Farmer*, 511 U.S. at 823. The required culpability—deliberate indifference—occurs only when the official “knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 837. Because the official’s responsibility is to take “reasonable measures” to protect an inmate, *id.* at 832 (citing *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)), the Eighth Amendment is not violated so long as he responds reasonably to the known risk “even if the harm ultimately was not averted,” *id.* at 844; accord *Marsh v. Butler Cnty.*, 268 F.3d 1014, 1028 (11th Cir. 2001) (en banc) (“An Eighth

Amendment violation will occur when a substantial risk of serious harm, of which the official is subjectively aware, exists and the official does not ‘respond[] reasonably to the risk.’”) (quoting *Farmer*). Causation is an essential element of the claim. *Carter*, 352 F.3d at 1349.

Thus, to make out an Eighth Amendment claim based on deliberate indifference to detainee safety, the plaintiff must allege and ultimately prove: (1) a substantial risk of serious harm; (2) the facility official was subjectively aware of that risk; (3) the official disregarded the known risk by not responding reasonably to it; and (4) causation. *Farmer*, 511 U.S. at 832, 837; *Marsh*, 268 F.3d at 1028; *Carter*, 352 F.3d at 1349. To meet this standard “there must be more than a mere possibility of serious harm; instead, there must be a strong likelihood.” *Turner v. Burnside*, 444 F. App’x 394, 396 (11th Cir. 2011). In determining subjective knowledge, the court asks whether the defendant was aware of a “particularized threat or fear felt by [the plaintiff].” *Carter*, 352 F.3d at 1350.

Section 1983 claims cannot be based upon *respondeat superior* or vicarious liability. *See Brown v. Smith*, 813 F.2d 1187, 1188 (11th Cir. 1987); *Zatler v. Wainwright*, 802 F.2d 397, 401 (11th Cir. 1986). Without some degree of personal participation in the alleged deprivation of the plaintiff’s rights by the defendant, no liability exists. *See id.* To state a claim against a supervisory official, a plaintiff must allege that the supervisor personally participated in the alleged unconstitutional conduct or that there is a “causal connection” between the actions of the supervisor and the alleged constitutional deprivation. *See Simpson v. Stewart*, 386 Fed. Appx. 859, 860 (11th Cir. 2010). A causal connection may be shown by establishing that the supervisor (i) was on notice of a “history of widespread abuse” of constitutional rights but failed to take corrective action; (ii) established or put in place a policy that condoned the alleged constitutional deprivation; or (iii) directed subordinates to act unlawfully or knew that

subordinates would act unlawfully and failed to stop them from doing so. *See Mathews v. Crosby*, 480 F.3d 1265, 1270 (11th Cir. 2007); *accord Zatler*, 802 F.2d at 401 (“An official may also be liable where a policy or custom that he established or utilized results in deliberate indifference to an inmate’s constitutional rights.”); *Dale v. White Cnty.*, 238 Fed. Appx. 481, 484 (11th Cir. 2007) (“a plaintiff can show a supervisor imposed an improper custom or policy that constituted deliberate indifference to constitutional rights.”).

Diamond has not shown a likelihood of success on the merits of Counts I and IV of the amended complaint, which assert Eighth Amendment failure to protect claims. Stated simply, Diamond’s contentions of repeated “assaults” are disputed. Defendants refer to the Declaration of Grace Atchison and the incident reports and PREA documents referenced therein. As the Atchison declaration and the supporting documents show, there has not been one substantiated allegation of assault on Diamond at Coastal State Prison. As the Atchison declaration and supporting documents further show, there is both an incident reporting and investigation process and also a PREA reporting and investigation process, both of which have been created and designed to protect offenders such as Diamond, and Diamond on the advice of her counsel has refused to participate, to be interviewed, and to provide information in that process. This conduct of refusal to participate in investigations is fundamentally at odds with a claim that requires proof of deliberate indifference. And the evidence does not show deliberate indifference—meaning knowledge of risk and failure to address that risk. Rather, the evidence shows that GDC and Coastal State Prison have policies and practices in place that are designed to protect offenders including Diamond, and also that Coastal State Prison has people on the ground ready to investigate and act on allegations of assault. Diamond has not shown a likelihood of success

on the merits of Count I (the Eighth Amendment failure to protect claim), which appears to be premised on alleged individual deliberate indifference.

Diamond also has not shown a likelihood of success on Count IV of the amended complaint. Diamond asserts in Count IV supervisor liability claims based on an alleged “de facto placement ban” which she contends keeps her from being assigned to a women’s facility where, she further contends, she will be safer and better protected from offender assaults. But, as shown by the Atchison declaration and also by the Declaration of Ahmed Holt, there is no “de facto placement ban.” Diamond’s housing assignment was made after assessment of her medical and mental health condition, her transgender status, her stated housing preference—which was somewhat inconsistent but which included her statement that she would be ok with placement in a medium-security men’s prison (there is an audio recording of the interview with Grace Atchison where Diamond made this statement)—and then also after Mr. Holt and Robert Toole, GDC’s Director of Facility Operations, considered and decided upon the placement at Coastal State Prison based on a number of health and security considerations that are identified in Holt’s declaration. As further shown by the Holt declaration and also by the Declaration of Coastal State Prison Warden Brooks Benton, Diamond has been placed at Coastal State Prison for a number of reasons specifically related to her security, and she has been assigned to and consistently housed in a dormitory with other offenders who as a rule are focused on self-improvement and life after incarceration, not on committing rules infractions such as assaulting other offenders. All of this evidence points to efforts to protect and ensure Diamond’s safety, not deliberate indifference.

Diamond’s motion inexplicably asserts that she has been placed in a “serious of men’s prisons where she faced an undue risk of assault.” This assertion is simply false, and although

some parts of the motion touch on matters that are disputed (whether or not there have been “assaults”), here there is no dispute at all. In this period of incarceration, Diamond has been housed at one facility—Coastal State Prison. She has returned to Georgia Diagnostic and Classification prison only on a few instances and then only for medical or mental health reasons. Her placement at Coastal State Prison was a deliberate choice made for her safety, and again it was premised on the various mental health and security considerations that are set forth in Holt’s declaration.

Finally, Diamond’s motion asserts that “Defendants Benton and Toole placed Ms. Diamond in a cell that does not lock, and unjustifiably refused to repair the lock for months even after Ms. Diamond was repeatedly attacked by intruders.” This assertion also is simply false as shown by the documentary record. Filed herewith under seal as Exhibit 15 are maintenance reports showing that the door to the cell that Diamond first occupied at Coastal State Prison (N-building cell 106) was fixed before she arrived at the facility, and further showing that the only other cell door locking issue was when Diamond placed a rag in the door to her cell 136. That issue was fixed by removal of the rag. Offender Diamond has compromised her own safety as the disciplinary records show by tampering with the cell door in this way.

2. *Diamond has not established a substantial likelihood of success on the merits of her Fourteenth Amendment Equal Protection Claim (Count V and VI).*

The Equal Protection Clause of the Fourteenth Amendment provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1. The Supreme Court has interpreted this clause as “a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). To establish an equal protection violation, a plaintiff must allege, and ultimately prove, (1) that he or she is similarly situated with others who received more favorable

treatment, and (2) the discriminatory treatment was based on a constitutionally protected status or interest. *See Jones v. Ray*, 279 F.3d 944, 946–47 (11th Cir. 2001); *Damiano v. Fla. Parole & Probation Comm.*, 785 F.2d 929, 932 (11th Cir. 1986). The plaintiff also must plead specific facts showing the similarities of the comparators that he or she contends were treated more favorably. *Jackson v. Bellsouth Telecomm.*, 372 F.3d 1250, 1273–74 (11th Cir. 2004). And the plaintiff must allege, and ultimately prove, that the alleged different treatment was the result of a discriminatory motive or purpose. *See Sweet v. Sec’y, Dep’t of Corr.*, 467 F.3d 1311, 1318–19 (11th Cir. 2006) (stating that the plaintiff must demonstrate that similarly situated persons outside his protected class were treated more favorably and that “the state engaged in invidious discrimination against him based on race, religion, national origin, or some other constitutionally protected basis”); *see also Amnesty Int’l, USA v. Battle*, 559 F.3d 1170, 1180 (11th Cir. 2009); *Parks v. City of Warner Robins*, 43 F.3d 609, 616 (11th Cir.1995) (requiring “proof of discriminatory intent or purpose” to show equal protection violation).

The equal protection clause requires similar treatment *for similarly situated persons*. *See Campbell v. Rainbow City*, 434 F.3d 1306, 1314 (11th Cir. 2006) (noting “different treatment of dissimilarly situated persons does not violate the equal protection clause”). Comparators must be similarly situated in all relevant respects. *See id; accord Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1202–03 (11th Cir. 2007).

To show discriminatory motive, the complaint must set forth more than “bare allegations of malice.” *Terrero v. Watts*, 2003 U.S. Dist. LEXIS 27372, at *10 (S.D. Ga. Sept. 8, 2003). “Discriminatory purpose . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decision maker . . . selected or reaffirmed a particular course

of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

Diamond has not shown a likelihood of success on the merits of Counts V and VI of the amended complaint, which assert equal protection claims under the Fourteenth Amendment. In Count V, Diamond alleges that she is similarly situated to “cisgender women” who would be at risk if placed in men’s prisons, yet she still has been placed in men’s prisons. Diamond’s motion takes aim at what she contends are gender stereotypes lurking behind GDC’s placement determinations. But it is Diamond’s motion that relies upon pure generalizations rather than pertinent facts. As evidence on the essential “similarly situated” component of her claim, Diamond’s counsel have pulled and presented public information on the offenses that were committed by offenders who are held in women’s prisons. (Presumably, similar offenses were committed by many offenders who are held in men’s prisons). Whether Diamond as a transgender woman should be placed in a women’s prison surely will not be determined by whether she committed the same offense as some offenders in women’s prisons. Rather, more relevant in the analysis would be whether Diamond’s presence in a women’s facility may create security risks to her or to other offenders and whether, in connection with that risk, Diamond has demonstrated a willingness to ignore prison rules. There already is evidence before the Court that cuts against Diamond on both counts— she is sexually active, as is demonstrated by the disciplinary report and findings in relation to the October 31, 2020 incident, and she flaunts or ignores basic security rules, for example by blocking and tampering with locks and also by consorting with other offenders inside her cell. This is evidence that Diamond is a security risk, notably both to herself and to others, and she would be such a security risk at a women’s facility. Because Diamond’s equal protection argument is literally just that at this point in the case—a

legal brief without demonstrated undisputed evidence supporting the position put forth in the brief—preliminary injunctive relief should not be granted on this aspect of her lawsuit.

Diamond also has not shown a likelihood of success on Count VI of the amended complaint. Diamond asserts in Count VI supervisor liability claims based on the alleged “de facto placement ban” which she contends results in her being kept in a men’s facility whereas, she further contends, similarly situated “cisgender women” are housed in female facilities where they are safer and better protected from offender assaults. But here again, as shown by the Atchison declaration and also by the Declaration of Ahmed Holt, there is no “de facto placement ban.” Diamond’s housing assignment was made after assessment of her medical and mental health condition, her transgender status, her stated housing preference—which, again, included her statement that she would be ok with placement in a medium-security men’s prison—and then also after Mr. Holt and Mr. Toole considered and decided upon the placement at Coastal State Prison based on a number of health and security considerations that are identified in Holt’s declaration. As further shown by the Holt declaration and also by the Declaration of Coastal State Prison Warden Brooks Benton, Diamond has been placed at Coastal State Prison for a number of reasons specifically related to her security, and she has been assigned to and consistently housed in a dormitory with other offenders who as a rule are focused on self-improvement and life after incarceration, not on committing rules infractions such as assaulting other offenders. None of this evidence suggests differential treatment based on sex.

Finally, Diamond’s motion is deficient in another respect as to Count VI. The motion assumes, but provides no evidence, that as a transgender woman, Diamond will be safer in a women’s facility. Here again, the motion relies on generalizations and presents no evidence

whatsoever on the experience and relative safety of transgender women in women's prisons. Absent real evidence on this point, Diamond has not made out her equal protection claims.

3. *Diamond has not established a substantial likelihood of success on the merits of her Eighth Amendment medical deliberate indifference claim (Count VII).*

In any Eighth Amendment deliberate indifference claim, success turns on whether the plaintiff can demonstrate an objectively serious medical need coupled with a defendant's knowing disregard of a risk of serious harm. *See Farrow*, 320 F.3d at 1243. “[O]nly the unnecessary and wanton infliction of pain constitutes cruel and unusual punishment forbidden by the Eighth Amendment.” *Ingraham v. Wright*, 430 U.S. 651, 670 (1977) (internal quotations omitted). The record must show acts or omissions “so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.” *Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986). Additionally, these acts or omissions must be sufficiently harmful to evidence “deliberate indifference to a serious medical need.” *Estelle*, 429 U.S. at 106.

As these requirements make clear, “mere accidental inadequacy, negligence in diagnosis or treatment, or even medical malpractice” is not actionable under the Eighth Amendment. *Taylor v. Adams*, 221 F.3d 1254, 1258 (11th Cir. 2000). The plaintiff must show a “need for medical care and the intentional refusal to provide care” tantamount to a “subjective intent to punish.” *Id.*; *Ancata v. Prison Health Svs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985). As with failure to protect claims against prison officers, a prison physician is not liable for known risks if they responded reasonably to the risk, even if the harm ultimately was not averted. *Chandler v. Crosby*, 379 F.3d 1278, 1290 (11th Cir. 2004).

The Eighth Amendment does not require prison officials to provide the most cutting-edge treatments available, but only an adequate level of treatment. *See Estelle*, 429 U.S. at 105; *see*

also *United States v. DeCologero*, 821 F.2d 39, 42 (1st Cir. 1987) (“[T]hough it is plain that an inmate deserves adequate medical care, he cannot insist that his institutional host provide him with the most sophisticated care that money can buy.”). The Supreme Court has explained that “society does not expect that prisoners will have unqualified access to health care.” *Hudson v. McMillian*, 503 U.S. 1, 9 (1992).

Of particular importance in this case, an inmate cannot establish a constitutional violation simply because she “may have desired different modes of treatment” than that which was provided to her. *See Hamm v. DeKalb Cnty.*, 774 F.2d 1567, 1576 (11th Cir. 1985); *see also Kosilek v. Spencer*, 774 F.3d 63, 82 (1st Cir. 2014) (Eighth Amendment “does not impose upon prison administrators a duty to provide care that is ideal, or of the prisoner’s choosing”). One circuit court decision analyzing deliberate indifference in the context of a transgender inmate requesting additional treatment for her gender dysphoria described the issue as follows:

[W]e have consistently held that prison officials do not act with deliberate indifference when they provide medical treatment even if it is subpar or different from what the inmate wants. These holdings apply here because [plaintiff] is obtaining psychological counseling and hormone treatments, including estrogen and testosterone-blocking medication. Though prison officials have not authorized surgery or the hormone dosages that [plaintiff] wants, the existing treatment precludes a reasonable fact-finder from inferring deliberate indifference.

Lamb v. Norwood, 895 F.3d 756, 760 (10th Cir. 2018).

As described in detail below, Diamond has not shown a likelihood of success on the merits on Count VII of the amended complaint, which asserts that Defendants Lewis, Jackson, and Sauls have acted with deliberate indifference in violation of the Eighth Amendment by failing to provide adequate medical and mental health care. Specifically, Diamond claims that these defendants were subjectively aware of and yet knowingly disregarded recommendations by Diamond’s care providers for specific forms of treatment for her gender dysphoria, including 1)

gender expression accommodations such as medicated hair removal treatments; 2) timely and consistent hormone treatments and monitoring of Diamond's blood work to ensure therapeutic hormone levels; and 3) transfer to a female facility. As discussed in further detail below, Diamond's claims that she has not received timely and consistent hormone therapy is shown to be incorrect by the documentary evidence, and her requests for treatments such as medicated hair removal do not fall within the ambit of Eighth Amendment protections. Most importantly, there has been no recommendation by a medical or mental health care provider that a transfer to a female facility is medically necessary to treat Diamond's conditions.

Defendants are providing with this response the declarations of Dr. Sharon Lewis, GDC's Statewide Health Director, and Dr. Marc Weinstein, GDC's Interim Statewide Mental Health Director and Chief Psychologist. *See* Declaration of Sharon Lewis ¶ 2; Declaration of Marc Weinstein ¶ 2. These officials are familiar with GDC's policy concerning the classification and management of transgender and intersex offenders, including offenders with gender dysphoria, and the individualized assessments and care Diamond has received under that policy. Lewis Decl. ¶ 3; Weinstein Decl. ¶ 3.

Based on a review of Diamond's records, Drs. Lewis and Weinstein state that she is regularly seen by medical and mental health care providers for a variety of complaints (including those related to gender dysphoria), each time receiving consultation, assessment, and treatment as determined by her providers. Lewis Decl. ¶ 15; Weinstein Decl. ¶ 9. Diamond has received and continues to receive treatment for her gender dysphoria as recommended and deemed necessary by her care providers, including regular counseling and therapy by a team of qualified practitioners, psychiatric medications, and hormone therapy. Lewis Decl. ¶ 24; Weinstein Decl. ¶ 18. Diamond has also been provided a comprehensive treatment plan to address her gender

dysphoria (among her other conditions), and her treatment plan is periodically reviewed and updated. Lewis Decl. ¶ 24; Weinstein Decl. ¶ 18. Diamond's condition is stable with treatment presently provided for her gender dysphoria. Lewis Decl. ¶ 24; Weinstein Decl. ¶ 18.

These statements are bolstered by the medical and mental health records, which show that upon entering into GDC custody, Diamond underwent screening to assess for potential mental health issues and was referred for specialty consultation with an endocrinologist to determine her medical need for hormone treatments. Lewis Decl. ¶ 7; Weinstein Decl. ¶ 7. The request for consultation with an endocrinologist was submitted on Diamond's behalf and promptly approved by GDC. Lewis Decl. ¶ 7. Diamond continues to receive hormone therapy as part of her treatment for gender dysphoria. *Id.* ¶ 8.

Contrary to Diamond's claim that she has had difficulty accessing hormone therapy and that the hormone therapy she receives is erratic and unmonitored, the medical records reflect that she has been seen by an endocrinologist on at least three occasions for monitoring, medication adjustments, and management of her hormone treatments since entering into GDC custody. *Id.* ¶ 10. For each consultation, blood work was completed allowing the endocrinologist to monitor Diamond's hormone levels and to adjust the dosages of her hormone treatments as medically warranted. *Id.* ¶ 12. The medical records further reflect that Diamond was seen by an endocrinologist as recently as April 21, 2021, and that she is currently scheduled to meet with him again on August 4, 2021. *Id.* ¶ 11. Diamond has consistently been receiving and continues to receive hormone therapy as determined and prescribed by her endocrinologist to treat her gender dysphoria. *Id.* ¶¶ 8, 13. In addition to hormone therapy, Diamond's mental health records reflect that she also receives psychiatric medications as prescribed by her mental health care providers to treat her gender dysphoria and related symptoms. Weinstein Decl. ¶ 9.

Discovery is needed to determine whether Diamond's other requests—including medicated hair removal products, gender expressive commissary items, and placement in a women's facility—are medically necessary as the case posits or merely Diamond's preferred forms of treatment. Importantly, there has not been any determination, finding, or formal recommendation by Diamond's care providers that these accommodations are medically necessary to treat her gender dysphoria. Lewis Decl. ¶¶ 22–23; Weinstein Decl. ¶ 17. Indeed, none of Diamond's care providers have submitted a referral or consultation request for medical intervention for gender dysphoria beyond what she is already receiving. Lewis Decl. ¶ 22. The only consultation requests submitted concerning Diamond's gender dysphoria have been requests for hormone treatments and consultations with an endocrinologist, all of which have been approved by GDC. *Id.* Thus it cannot be said that Defendants Lewis, Jackson, or Sauls disregarded a known risk that failing to provide Diamond with *her* requested accommodations (as opposed to requests by her care providers) would exacerbate her condition.

Given the level of medical and mental health care provided to Diamond, it is clear at this preliminary stage that Defendants' response to Diamond's medical needs has not been so poor as to constitute "an unnecessary and wanton infliction of pain." *Taylor*, 221 F.3d at 1258. Diamond has been provided with consistent care based on the assessments of her providers, including regular counseling and therapy, psychiatric medication, consultation with an endocrinologist, and hormone therapy. *See Lamb*, 895 F.3d at 760 (finding no deliberate indifference where gender dysphoric inmate was provided with psychological counseling and hormone treatments). There is no evidence that the care provided is grossly inadequate as would be required to show deliberate indifference. *See Rogers*, 792 F.2d at 1058. Therefore, Diamond

is unable to show a substantial likelihood of success on the merits at this early stage of the litigation.

B. Diamond has not shown that she will suffer irreparable injury unless the injunction issues.

“A showing of irreparable injury is ‘the *sine qua non* of injunctive relief.’” *Siegel*, 234 F.3d at 1176 (quoting *Ne. Fla. Chapter of Ass’s of Gen. Contractors of Am.*, 896 F.2d at 1285). To make such a showing, the irreparable harm “‘must be neither remote nor speculative, but actual and imminent.’” *Id.* (quoting *Ne. Fla. Chapter of Ass’s of Gen. Contractors of Am.*, 896 F.2d at 1285). Stated differently, the movant must establish “that the irreparable harm is not merely possible, but likely.” *United States v. Jenkins*, 714 F. Supp. 2d 1213, 1222 (S.D. Ga. 2008) (citing *Winter*, 555 U.S. at 24). “[E]ven if Plaintiff establishes a likelihood of success on the merits, the absence of a substantial likelihood of irreparable injury would, standing alone, make preliminary injunctive relief improper.” *Siegel*, 234 F.3d at 1176 (citing *Snook v. Trust Co. of Ga. Bank of Savannah, N.A.*, 909 F.2d 480, 486 (11th Cir. 1990)).

1. The evidence suggests that the alleged irreparable harm to Diamond is speculative and hypothetical rather than actual and imminent.

Diamond contends that without the requested injunctive relief, she will “suffer severe physical and emotional injury, including sexual abuse, sexual assaults, depression, anxiety, suicidal ideation, worsening PTSD, and suicide and self-castration attempts.” ECF No. 50-1 at 33. It bears repeating that to qualify for preliminary injunctive relief, the harm alleged must be “actual and imminent” or “real and immediate” as opposed to harm that is “merely conjectural or hypothetical.” *Siegel*, 234 F.3d at 1176; *Church v. City of Huntsville*, 30 F.3d 1332, 1337 (11th Cir. 1994); *see also Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (“To constitute irreparable harm, an injury must be certain, great, actual ‘and not theoretical.’”)

(quoting *Wis. Gas. Co. v. Fed. Energy Regul. Comm'n*, 758 669, 674 (D.C. Cir. 1985)). In this instance, the documentary evidence submitted by Defendants suggests that the alleged irreparable harm to Diamond is neither certain nor imminent.

First, as previously shown, whether or not Diamond has been subjected to physical “assaults” is disputed. Diamond is currently housed in a facility—and in a dormitory within that facility—that has been specifically selected for her safety. Moreover, Diamond’s allegations of physical “assault” go too far back to reasonably show that future harm is imminent.

With respect to Diamond’s allegation that denying the requested relief will cause her to become depressed, anxious, and suicidal, the medical and mental health records reflect that Diamond generally denies experiencing suicidal ideation. *See* Weinstein Decl. ¶ 11. Thus, any allegation that she is faced with an “actual and imminent” risk of suicide or self-harm is directly contradicted by her statements to her care providers. There is also no medical encounter form, progress record, physician’s order, or other document reflecting that Diamond has received medical treatment for a suicide attempt while in GDC custody. *Lewis Decl.* ¶ 20. If Diamond were to experience an acute crisis, her care providers have the option to admit her to a specialized care unit that provides a higher level of observation and treatment. *See* Weinstein Decl. ¶ 16.

This is not to say, however, that the risk of suicide should be ignored or downplayed. It is true, as Diamond’s motion argues, that depression, anxiety, self-injurious behavior, and suicidal ideation are substantial harms that may rise to the level of an irreparable injury. *See, e.g., Edmo v. Corizon, Inc.*, 935 F.3d 757, 798 (9th Cir. 2019) (“[O]ngoing psychological distress and the high risk of self-castration and suicide . . . constitute irreparable harm.”); *Tugg v. Towey*, 864 F. Supp. 1201, 1209 (S.D. Fla. 1994) (“Psychological stress which could lead to suicide”

may constitute an “irreparable injury”); *Chalk v. United States Dist. Court*, 840 F.2d 701, 709 (9th Cir. 1988) (emotional distress, depression, and anxiety may constitute irreparable injury). It is also true that Diamond has a self-reported history of suicide attempts before entering into GDC custody and that she has engaged in self-injurious behavior (specifically, attempts to self-castrate by binding her genitals) while in Defendants’ custody.

However, as described in detail above, Diamond has received and continues to receive treatment for these conditions as recommended and deemed necessary by her care providers, including regular counseling and therapy by a team of qualified practitioners, psychiatric medications, and hormone therapy. Lewis Decl. ¶ 24; Weinstein Decl. ¶ 18. For purposes of determining whether an inmate is likely to suffer irreparable harm while the litigation is pending, courts have often looked to whether the inmate has been provided with some form of adequate treatment as opposed to no treatment at all. *Compare Dollar v. Kemp*, 2011 U.S. Dist. LEXIS 73919, at *7–8 (S.D. Ga. May 25, 2011) (inmate failed to establish substantial threat of irreparable injury where the pleading “shows that he received medical treatment—albeit not treatment that was to his liking”), *with D’Amico v. Montoya*, 2016 U.S. Dist. LEXIS 121686, at *5–7 (N.D. Fla. July 28, 2016) (where the “[inmate] has shown the total withdrawal of treatment, and Defendants have not shown any treatment provided,” the requested preliminary injunction should issue because “[n]ot providing any treatment . . . creates a serious risk of irreparable harm.”); *see also Brown v. Johnson*, 387 F.3d 1344, 1350 (11th Cir. 2004) (inmate demonstrated “imminent danger of serious physical injury” for purposes of 28 U.S.C. § 1915(g) where prison officials “completely withdrew [his] prescribed treatment” for HIV and hepatitis). As these cases hold, any threat of irreparable harm to Diamond is greatly ameliorated by the care she is receiving.

2. *Diamond’s assertion that she will suffer irreparable harm is undercut by her delay in bringing this motion.*

Diamond’s delay in bringing this motion demonstrates that she is not at risk of irreparable harm while this case proceeds in the normal course. Diamond in her motion alleges that she has endured numerous sexual assaults and been deprived of medically necessary care since her October 2019 return to custody. ECF No. 50-1 at 10–17. Yet despite the allegedly “endless torrent” of sexual harassment and abuse, *id.* at 12, Diamond has delayed bringing this motion until a year and a half after her return to GDC custody and four months after the commencement of this lawsuit.

It is well established that a delay in seeking a preliminary injunction weighs against a finding of irreparable harm. *See, e.g., Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2006) (“A delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm.”); *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 903 (7th Cir. 2001) (“Delay in pursuing a preliminary injunction may raise questions regarding the plaintiff’s claim that he or she will face irreparable harm.”); *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 277 (2d Cir. 1985) (“[F]ailure to act sooner ‘undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury.’”) (quoting *Le Sportsac, Inc. v. Dockside Research, Inc.*, 478 F. Supp. 602, 609 (S.D.N.Y. 1979)). Because Diamond has delayed in bringing her motion for preliminary injunctive relief, the Court should find she is unlikely to suffer irreparable harm while the case proceeds in the normal course.

C. Because there is no threat of irreparable injury, the balancing of interests weighs in favor of Defendants.

A movant for preliminary injunctive relief must also show that “the threatened injury . . . outweighs whatever damage the proposed injunction may cause the opposing party.” *Siegel*, 234 at 1176. “It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.” *Preiser v. Rodriguez*, 411 U.S. 475, 491–92 (1973). It is the established law of this circuit that courts “must afford ‘due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures . . . consistent with consideration of costs and limited resources,’” *Davila v. Gladden*, 777 F.3d 1198, 1206 (11th Cir. 2015) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 723 (2005)); *see also Pope v. Hightower*, 101 F.3d 1382, 1385 n.2 (11th Cir. 1996) (“Federal courts must scrupulously respect the limits on their role by not thrusting themselves into prison administration; prisoner administrators must be permitted to exercise wide discretion in the bounds of constitutional requirements.”).

Diamond argues that she is entitled to a preliminary injunction because the alleged risk of harm to her (i.e., sexual abuse and assault, depression, anxiety, and the possibility of self-harm) is more serious than any risk of harm to Defendants. As noted above, however, the alleged risks of irreparable harm to Diamond are simply too speculative and are greatly ameliorated by being housed in a dormitory specially selected for her safety and by the regular medical and mental health treatment she receives. At the other end of the scale rests the potential burden of the Court’s interference in matters of internal prison administration. Where, as here, “accommodation of an asserted right will have a significant ‘ripple effect’ on fellow inmates or prison staff, courts should be particularly deferential to the informed discretion of corrections officials.” *Turner v. Safley*, 482 U.S. 78, 90 (1987). For this reason, the Court should find that

the potential damage to Defendants outweighs any alleged threat of irreparable harm to Diamond.

D. Diamond’s requested relief would be adverse to the public interest.

Finally, Diamond’s requested injunctive relief would be adverse to the public’s interest in allowing prison officials to see to the daily administration of prisons free from judicial interference.

In enacting the Prison Litigation Reform Act of 1995 (“PLRA”), Congress placed limits on the scope of prospective relief that a federal court may enter in prison litigation. *See* 18 U.S.C. § 3626(a)(1). The limitations are consistent with the Supreme Court’s view that federal courts should have less involvement in state prison systems. *See Parrish v. Ala. Dep’t of Corr.*, 156 F.3d 1128, 1129 n.2 (11th Cir. 1998) (citing *Sandin v. Conner*, 515 U.S. 372, 481 (1995); H.R. Conf. Rep. 104–378 (1995) (stating that Congress designed § 3626 to ensure that prospective relief is the “minimum necessary to correct the violation of a federal right”)). The PLRA specifically limits the scope of a federal court’s authority to enter prospective relief as follows:

Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

18 U.S.C. § 3626(a)(1)(A).

As the cited text makes clear, among the essential prerequisites to the imposition of prospective injunctive relief in prison litigation are: (1) a finding of a violation of a constitutional right; and (2) an adequate description of the relief that is requested such that the federal court can

make a determination that the relief is “narrowly drawn, extends no further than necessary to correct the violation . . . and is the least intrusive means necessary to correct the violation.” *Id.*

Aside from its failure to show a constitutional violation by any of the Defendants, Diamond’s request for injunctive relief asks the Court to enjoin Defendants from using male correctional officers to strip-search Diamond absent exigent circumstances. It also requests that the Court direct Defendants to transfer Diamond to a female facility and to provide gender expression accommodations such as medicated hair removal treatments, access to female commissary items, and female hairstyle and grooming standards. Rather than being tailored to address a constitutional violation, the motion plainly seeks to interfere with the normal operation of the prison system. Diamond has failed to satisfy her burden as to each of the prerequisites and certainly has not satisfied the heightened burden of a mandatory injunction. *See Callander*, 256 F.2d at 415; *Dantzler, Inc.*, 2013 U.S. Dist. LEXIS 78664, at *3. For these reasons, Diamond’s motions should be denied.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny Diamond’s requests for the extraordinary remedy of preliminary injunctive relief and allow the case to proceed in the normal course.

[Signature page follows]

Respectfully submitted this 3rd day of May, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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DECLARATION OF AHMED HOLT

I, Ahmed Holt, declare as follows:

1. My name is Ahmed Holt and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true, and I give this declaration freely and for use as evidence in the case styled *Ashley Diamond v. Timothy Ward*, Case No. 5:20-cv-453 in the U.S. District Court for the Middle District of Georgia.

2. I am employed by the Georgia Department of Corrections (GDC) as Assistant Commissioner, Facilities Division. Among other responsibilities, I am involved in the review of recommendations regarding the classification and placement of transgender offenders, as that process is carried out under GDC Standard Operating Procedure 220.09, entitled Classification and Management of Transgender and Intersex Offenders, a policy with an effective date of July 26, 2019.

3. I am aware that offender Ashley Diamond claims that there is a “De Facto Placement Ban” by which a GDC transgender offender will never be considered for placement, or placed, in a facility housing persons of the gender with which the transgender offender identifies. That claim is not true.

4. Offender Diamond has been placed and housed at Coastal State Prison (CSP) for several reasons, which I considered and discussed with GDC’s Director of Facility Operations, Robert Toole.

These reasons include the following:

- CSP is not a close security facility, instead it is a medium security facility;
- CSP is designated and equipped to provide care for mental health level II offenders;
- CSP had an experienced and excellent medical team;
- CSP is near a metropolitan area, so if Diamond had an urgent need for hospitalization there are local and nearby options;

- CSP had a housing unit (N building) that could meet all of these specifications – it could be fitted with proper camera equipment; it was close to the facility medical unit; and it had 2-man cells that could be locked as opposed to an open living environment;
- By comparison to other medium security prisons, CSP is the safest facility in which to house Diamond because of its small percentage of close security offenders;
- Mental health level III facilities have a higher percentage of close security offenders: Augusta State Medical Prison has 36% close security offenders; Baldwin State Prison has 31% close security offenders; Central State Prison has 13% close security offenders; and Rutledge State Prison has 15.3% close security offenders, compared to CSP which is 8%;
- Other medium security facilities either did not have mental health level II services, for example Wilcox State Prison, Washington State Prison, Dooly State Prison, and Calhoun State Prison; or they have a higher percentage of close security offenders, for example Autry State Prison which has 14% close security offenders. Additionally, they are typically located in a more rural area without convenient access to hospital care as CSP, for example Rogers State Prison in Reidsville.

5. Our goal was to house offender Diamond at a facility that would provide good medical care and good access to specialized or hospital care if needed, the requisite level of mental health care (mental health level II), and limited exposure to close security offenders, all in an environment that allowed living securely in a general population dormitory.

6. CSP had other features that made it suitable for offender Diamond's placement, including the fact that the N building where Diamond has been housed has functioned as a Faith and Character dormitory, an Honor dormitory, and an Evidence Based Program dormitory. That sort of living

environment is a safe prison environment because the offenders who are placed there generally are selected for the placement based on a demonstrated interest in improving themselves and leaving the correctional setting, rather than committing infractions such as harming other offenders.

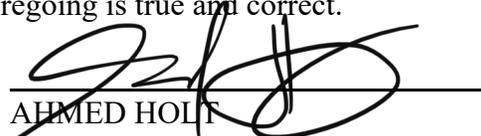
7. Based on all of these considerations and the fact that in the classification process there was not a recommendation to place offender Diamond in a women's prison, in consultation with Mr. Toole I made the decision that offender Diamond would be placed at CSP. I instructed Mr. Toole to get in touch with Warden Benton at CSP to make arrangements for that placement. Cameras were upgraded in the N building at CSP where Diamond was to be housed.

8. I am aware that there also is an assertion in this case that offender Diamond has been classified as a gang member. That assertion also is not true. **Attachment 1** hereto is a true and correct copy of the Security Threat Groups Validation for offender Diamond. As noted, the designation is STI or Security Threat Individual, and as this document shows this is based on a disciplinary record and report concerning exposure, exhibition, and sexual behavior.

9. I am aware that there is also an assertion in this case that offender Diamond has been retaliated against and Diamond's release date has changed based on court filings, and further that officials at CSP have improperly communicated with the Georgia Board of Pardons and Paroles to alter Diamond's release date. I am aware of no such retaliation. The Parole Board has access to SCRIBE and to disciplinary records in GDC's systems, and so it has access to offender Diamond's disciplinary record. Additionally, the Parole Board assigns hearing examiners who commonly contact prison officials, including counselors and Wardens, for information related to an offender. The Parole Board, not GDC, makes all changes to release dates including changes to an offender's tentative parole month.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 5/3/21


AHMED HOLT

ATTACHMENT 1



Brian P. Kemp
Governor

GEORGIA DEPARTMENT OF CORRECTIONS
STATE OF GEORGIA



Timothy C. Ward
Commissioner

SECURITY THREAT GROUPS VALIDATION

11/04/2020

SUSPECTED-REVIEWED-VALIDATED

Offender Name:	DIAMOND, ASHLEY ALTON	Institution:	COASTAL STATE PRISON
GDC ID:	1000290565	STG Personnel:	MITCHELL, MICHAEL BYRON
Change Date:	11/04/2020		
Suspected Class-Nation:	PRISON-HYBRID	Suspected Group Affiliation:	STI - SECURITY THREAT INDIVIDUAL
Date of Affiliation:	11/03/2020	Place of Affiliation:	GDC Institution
Rank:	Unknown	Place Description:	

When did you join this group/organization? How old were you when you joined this group?

N/A

How did you become involved?

N/A

Why did you become involved?

N/A

What did you expect to gain by joining?

N/A

Have you gained anything (money, drugs, sex, etc.) through membership?

N/A

What role/rank do you have in this group?

N/A

Who recruited or sponsored you into this group?

N/A

Have you recruited anyone to this group, and if so, who?

N/A

How do you prove your loyalty to be accepted into this group?

N/A

Have you ever been told by the group to assault or "hit" anyone, and if so, by whom and why?

N/A

How have you communicated with other members on your group's activities?

N/A

How do members of your group communicate with each other (codes, hand signs, signals, rules, etc.)?

N/A

Are any of your family members involved with this group or any other group/gang, and if so, who?

N/A

Other than assault, have you been ordered to do anything else illegal, and if so, what and by whom?

N/A

Are you in contact with any other group/gang members either in or out of prison, and if so, who?

N/A

How does this group/gang financially support itself?

N/A

How and by whom is the money kept and distributed?

N/A

Who is the person in charge of your group/gang in this facility/area?

N/A

How is the governing body of this group/gang set up (Steering committee, Military Style, hierarchy, etc.)?

N/A

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Governor

GEORGIA DEPARTMENT OF CORRECTIONS
STATE OF GEORGIA



Timothy C. Ward
Commissioner

SECURITY THREAT GROUPS VALIDATION

Who are the leaders of the governing body?

N/A

Does this group/gang hide its true intentions by claiming to be religious in nature, and if so, what religion or beliefs are claimed?

N/A

What type of illegal or other activities is this group involved in?

N/A

Once in the group, how do you get out?

N/A

What signals, colors, or tattoos are used to signify group members?

N/A

If inmate has tattoos, specify date and name of person who took the photos of the inmate's tattoos.

STG Sgt. Mitchell took a picture of Offender Diamond, Ashley face on November 3, 2020.

INSTRUCTIONS: Place a check mark in the box in front of each criteria item that applies to this inmate, or which causes you to suspect that he/she may be affiliated with a security threat group. 5-9 total points will place offender in Suspected status, 10 or more total points will generate a request for Central Office to review validation package and place offender in Validated status. DOCUMENTATION OR PHYSICAL EVIDENCE ITEM MUST SUPPORT EACH CRITERION.

- Self Admission - Inmate verbally admits to gang membership. Score: 0
- Tattoos - Inmate has tattoos that are consistent with membership in a gang. Score: 0
- Use/Possession of gang symbols, logos, gang colors, drawings, hand signs, manner in which uniform is worn. (Example: pant leg rolled up on one side, etc.). Score: 0
- Possession of gang related documents, charters, by-laws, procedures, rosters, hit lists, etc. Score: 0
- Possession of gang publications. Score: 0
- Participation in gang publications-writing articles or placement of advertisements. Score: 0
- Court documents -Any documents received with commitment papers or otherwise obtained that indicate gang involvement. Score: 0
- Group Photo-Inmate appears in a photo with known gang members. Score: 0
- Observed association-Inmate observed routinely walking, eating, recreating or otherwise associating with known gang members (must be documented). Score: 0
- Contact with gang members - visiting, correspondence, financial transactions, phone calls with other known gang members (Must be documented). Score: 0
- Reliable informant information. Score: 0
- Membership documents - possession of membership cards, certificates of rank or title, letters of introduction etc. Score: 0
- Law Enforcement Intelligence (Note the source of information, contact numbers and copies of all documents). Score: 8
- Published/broadcast news accounts. Score: 0

Involvement or attempted involvement in gang-like activities such as: (CHECK ALL THAT APPLY) (2 PTS total for this criterion). Score: 2

- Assaultive towards other inmates. No
- Assaultive towards staff. No
- Compromise of staff. No
- Contraband Introduction - Alcohol (commercial) No

Contraband Introduction - Alcohol (homemade)

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STATE OF GEORGIA

SECURITY THREAT GROUPS VALIDATION



Timothy C. Ward
Commissioner

	No
Contraband Introduction -Crack/cocaine	No
Contraband Introduction - Marijuana	No
Contraband Introduction - Other drugs/narcotics	No
Contraband Introduction - Firearms/ammo/materials	No
Contraband Introduction - Other weapons/materials	No
Contraband Introduction - Other contraband	No
Criminal Enterprise - Robbery	No
Criminal Enterprise - Burglary	No
Criminal Enterprise - Larceny	No
Criminal Enterprise - Drug sales/trafficking	No
Criminal Enterprise - Prostitution	No
Criminal Enterprise - Fraud/Scams	No
Criminal Enterprise - Alcohol sale/trafficking	No
Criminal Enterprise - Protection/Extortion	No
Possession of Contraband - Alcohol (commercial)	No
Possession of Contraband - Alcohol (homemade)	No
Possession of Contraband - Crack/cocaine	No
Possession of Contraband - Marijuana	No
Possession of Contraband - Other drugs/narcotics	No
Possession of Contraband - Firearms/ammo/materials	No
Possession of Contraband - Other weapons/materials	No
Possession of Contraband - Other contraband	No
Escape/Escape plots	No
Coercion/extortion	No
Inciting/threatening behavior	No
Intimidation/threatening behavior - Other inmates	No
Intimidation/threatening behavior - Staff	No
Intimidation/threatening behavior - Witnesses	No
Intimidation/threatening behavior - Others	No
Other gang-like behavior	No
Preys upon other inmates	Yes
Scams/con games/gambling	No
Violence, promoting/participating	No
Weapons, possession/use/manufacture	No

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Brian P. Kemp
Governor

GEORGIA DEPARTMENT OF CORRECTIONS
STATE OF GEORGIA



Timothy C. Ward
Commissioner

SECURITY THREAT GROUPS VALIDATION

Organizing/promoting gang activity

No

TOTAL POINTS ACCURED 10

Other/Comments:

Offender Diamond, Ashely was served charges on November 01, 2020 at 0825 hours at Coastal State Prison for B-11 - HIGH -EXPOSURE/EXHIBITION, B-8 -HIGH -SEXUAL BEHAVIOR/ACTIVITY, B-10 -GREAT -SOLICIT SEXUAL ACTIVITY.

CENTRAL OFFICE ACTION

Security Threat Group **STI - SECURITY THREAT INDIVIDUAL**

Status: **Validated**

Date: **11/04/2020**

Comments:

DECLARATION OF BROOKS BENTON

I, Brooks Benton, declare as follows:

1. My name is Brooks Benton and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true, and I give this declaration freely and for use as evidence in the case styled *Ashley Diamond v. Timothy Ward*, Case No. 5:20-cv-453 in the U.S. District Court for the Middle District of Georgia.

2. I am employed by the Georgia Department of Corrections (GDC) as Warden at Coastal State Prison (CSP), a position that I have held since July 2019. I have been employed by the GDC since November 1993. Previously I served as Warden at Lee Arrendale State Prison, a women's prison; as Warden at Whitworth Women's Facility; as Deputy Warden of Security and Deputy Warden of Care and Treatment at Lee Arrendale State Prison; and in several other positions and roles going back to 1993.

3. Offender Ashley Diamond was moved to CSP in June 2020. I had no involvement in the decision to place Diamond at CSP. I receive a phone call from GDC's Director of Facility Operations, Robert Toole, informing me that Diamond would be placed at CSP. In the phone call, Mr. Toole asked for my input on the best dormitory placement for offender Diamond. I told Mr. Toole that the N building was the best dormitory for the placement.

4. N building at CSP originally was a Faith and Character and Honor dorm. Offenders who are placed in such dormitories have proven themselves over time to be hard workers – both in classes and in work details – and to be focused on self-improvement and on their lives after incarceration. That type of offender is less likely to violate prison rules and less likely to engage in conduct that is harmful to other offenders.

5. Over time, N building has evolved from a Faith and Character and Honor dormitory to what is known as an Evidence Based Program dormitory. The idea behind the Evidence Based Program is

that learning opportunities work for offenders. Offenders in the Evidence Based Program participate in a number of classes, including: Graphic Arts and Design, Cultural Diversity, Creative Writing, Arts and Craft, Mental Health Awareness, Gang Renunciation, GED Educational Tutoring, Path Finders - Mentorship Program, Social Interviewing, Culinary Arts, and Wellness Wednesdays.

6. For entry into the Evidenced Based Program there is an application and interview process, and there is a waiting list. Like offenders in the Faith and Character dorms and Honor dorms, the offenders who enter the Evidenced Based Program are hard workers and are focused on self-improvement and on their lives after incarceration, and they are less likely to violate prison rules including by engaging in conduct that is harmful to other offenders.

7. At CSP Offender Diamond was placed and has been continually housed in N building because for the reasons stated above it is the best and safest building. Cameras were upgraded in the N building before Diamond was transferred to the facility.

8. On initial arrival, offender Diamond was placed in N building, A range in cell 126-B for quarantine, and also was moved to cell 106-B on that range. Ultimately Diamond was placed in N building, B range, in cell 136-B. All of these cells share the feature that they are close to the front of the building and therefore close to both the exterior exit and the control room where the dorm officers have the best visibility to what is happening at that cell.

9. Offender Diamond has been placed in a 2-man cell. However from Diamond's initial placement and continuing to this day I have instructed that the top bunk be turned off, meaning that no other offender will be assigned to the cell and Diamond will have the privacy of a single person cell in an otherwise open general population dormitory.

10. I am aware that there is an assertion in this case that offender Diamond has been subjected to retaliation at CSP. I am aware of no retaliation against offender Diamond. True and correct copies of

Diamond's movement history, disciplinary history and records, institutional file, PREA records, grievances, incident reports, and other materials have been collected and will be filed with the Court under restricted access for Diamond's privacy and so are not attached directly to this declaration. The disciplinary history, disciplinary records, and PREA records in particular show that CSP staff are working and processing reports or allegations of sexual assault when the reports and allegations are made, and not that they are retaliating against offender Diamond.

11. I review disciplinary reports at CSP and I am aware of no instances of retaliation in Diamond's incarceration here at CSP. Each DR that Diamond has received at CSP has been justified based on the evidence collected in the disciplinary process.

12. I am aware that there is also an assertion in this case that offender Diamond's cell door does not lock and that makes Diamond vulnerable to attack or assault by another offender. That assertion is not true. **Attachment 1** hereto are maintenance records pertaining to the cells that Diamond has been housed in at CSP. The records show that the door to cell 106 was not securing at a point in time before Diamond's arrival at the facility (June 3, 2020) and it was fixed at that time, and that the only other cell door locking issue was when a rag was placed in the door to cell 136. That issue was fixed by removal of the rag. Offender Diamond has compromised her own safety as the disciplinary records show by tampering with the cell door in this way.

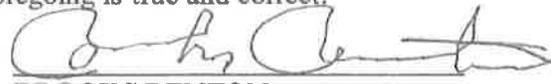
13. I am aware that there is also an assertion in this case that offender Diamond has been retaliated against and Diamond's release date has changed based on court filings, and further that I or others at CSP have improperly communicated with the Georgia Board of Pardons and Paroles to alter Diamond's release date. That assertion is not true. The Parole Board has access to SCRIBE and to disciplinary records in GDC's systems, and so it has access to offender Diamond's disciplinary record. Additionally, the Parole Board assigns hearing examiners who commonly contact prison officials,

including counselors and Wardens, for information related to an offender. The Parole Board, not GDC, makes all changes to release dates including changes to an offender's tentative parole month.

14. I was contacted by telephone either in December 2020 or early 2021 (January or February) with general questions about Diamond's behavior and disciplinary record. Such contacts are not uncommon. The phone call lasted a few minutes and generally on such calls I relay information that is contained in SCRIBE. To the best of my recollection, that is what occurred on this call. Crystal Moon of the Parole Board, who was at that time a hearing examiner, is the person who called me. I did not reach out to the Parole Board before this communication and I do not recall having other communications with the Parole Board concerning offender Diamond.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 5/3/2021


BROOKS BENTON

ATTACHMENT 1



MAINTENANCE CALL BACK REPORT

FACILITY NAME: Coastal State Prison

MAINTENANCE EMPLOYEE NAME: Joseph R Linker

EMPLOYEE ID: 01060603

DATE	TIME CALLED	TIME ARRIVED	TIME DEPARTED
10-31-2020	10:15 AM	11:30 AM	1:30 PM

DESCRIPTION OF THE PROBLEM:

cell door not securing (136)

CORRECTING ACTION(S):

removed Rag from door Jam. Lubricated lock

CALL BACK REQUESTED BY: Joseph Linker

MAINTENANCE EMPLOYEE SIGNATURE: Joseph R Linker

MAINTENANCE SUPERVISOR SIGNATURE: [Signature]



GEORGIA
DEPARTMENT OF CORRECTIONS

Georgia Department of Corrections



Maintenance Details

Requested By: State Prison, Coastal on 10/31/2020 10:15:00 AM
 Priority/Type: Normal / Emergency
 Completed: 10/31/2020 10:15:00 AM
 Status: Closed
 Description: 136B Not Secure

Shop: COASP

Georgia Department of Corrections
 Coastal State Prison
 Housing N

Labor

Date	Labor	Craft	Rate	Reg Hrs	OT Hrs	Cost
10/31/2020	Rinker, Joseph	General Trades	\$0.00	1		\$0.00
Labor Total:					<u>1</u>	<u>\$0.00</u>

Work Performance

Report: Removed Rag from lock mechanism

Total Billed: \$0.00



Maintenance Details

Requested By: State Prison, Coastal on 6/3/2020 2:00:00 PM
Completed: 6/3/2020 3:18:00 PM
Status: Closed
Description: Cell 106 not securing N-5

Priority/Type: Normal / Corrective
Shop: COASP
Assigned To: Smoaks, Randy

Georgia Department of Corrections
 Coastal State Prison
 Housing N

Labor

Date	Labor	Craft	Rate	Reg Hrs	OT Hrs	Cost
6/3/2020	Miller, Samuel	General Trades	\$0.00	1		\$0.00
				Labor Total:	<u>1</u>	<u>\$0.00</u>

Work Performance

Report: Repaired Lock

Total Billed: \$0.00

DECLARATION OF CARNESIA MACK

I, Carnesia Mack, declare as follows:

1. My name is Carnesia Mack and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true, and I give this declaration freely and for use as evidence in the case styled *Ashley Diamond v. Timothy Ward*, Case No. 5:20-cv-453 in the U.S. District Court for the Middle District of Georgia.

2. I am employed by the Georgia Department of Corrections (GDC) as a Unit Manager at Coastal State Prison (CSP) which is located in Garden City, Georgia.

3. At CSP, I am the Unit Manager over the Medical Unit, and on a rotating basis I also serve as the prison's Duty Officer. The Duty Officer assignment is a periodic, one-week, assignment starting at 8:00 am on Thursday and running to that same time the following week. The Duty Officer's responsibilities include doing morning and evening rounds each day, and also being on call to receive information regarding incidents occurring at the facility, provide instruction as needed to those working at the facility, and relay information to higher level officials.

4. While serving as Duty Officer on October 31, 2020, I received a phone call from Shift Lieutenant Reeves. Lt. Reeves called to inform me that Correctional Officer Courtney Brown had reported to her that while making rounds for count in N building, CO Brown opened offender Ashley Diamond's cell door and found offender Diamond and offender [John Doe] having sex in Diamond's cell. On the phone call I asked Lt. Reeves if the offenders had been separated and she indicated that they had been separated and were in the process of being escorted to the medical unit. I recall that I also spoke by phone with CO Brown. I can't recall if Lt. Reeves passed the phone to CO Brown to talk with me on that same phone call, or if instead I called back to the control room in the dormitory to speak on the phone with Brown a short time later. But in any event when I spoke on the phone to Brown she related the same

information to me as Lt. Reeves had related and she told me specifically that Diamond's penis was in the other offender.

5. I did not give any instruction to CO Brown as to what to write in her report or statement about this incident. My only instruction to her was to make sure the two offenders were separated and also to complete her statement about the incident.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 5-1-21

Carnesia R. Mack
CARNESIA MACK

DECLARATION OF COURTNEY BROWN

I, Courtney Brown, declare as follows:

1. My name is Courtney Brown and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true, and I give this declaration freely and for use as evidence in the case styled *Ashley Diamond v. Timothy Ward*, Case No. 5:20-cv-453 in the U.S. District Court for the Middle District of Georgia.
2. I am employed by the Georgia Department of Corrections (GDC) as a Correctional Officer at Coastal State Prison (CSP) which is located in Garden City, Georgia. I started working with GDC in October 2019 and completed Basic Correctional Officer Training on December 12, 2019.
3. At CSP I have worked various posts including in the medical unit, in 6B which is the counselor and education building, and also in the offender dormitories as the floor or dorm officer. I have worked every building on the compound.
4. I was on maternity leave beginning in June 2020 and then returned from my leave in September 2020. When I returned from maternity leave I was assigned to work first shift first key and my hours were 5:45 a.m. to 6:30 p.m. I was assigned first to work the hospital and then I started back working as a dorm officer.
5. On October 31, 2020 I came onto duty at 5:45 a.m. I reported to briefing and at that time I was assigned to work N building as dorm officer. So after briefing I reported to N building. I had to stop by main control on the way to get the keys and radio for N building.
6. When I arrived at N building I got briefed by the night shift officer. I cannot recall who that officer was. I then did rounds by walking the ranges (N building has an A range and a B range) for a security check, and after that I relieved the night shift officer.

7. At 8:30 a.m. there is a count. So at around 8:15 or 8:20 a.m. there is a lockdown and all offender movement on the compound is stopped for the count. Offenders inside the dormitories are supposed to stand outside their cells for the count. So at around that time I started opening doors to the offender cells in N building to make sure that everybody was up for the count.

8. When I opened the door to offender Ashley Diamond's cell I saw offender Diamond and offender John Doe on the bed. They were moving in a back and forth motion. Both of them had their pants pulled down and their buttocks were both exposed. Offender Diamond was on top. They did not hear me at first so I made a noise and when I did that offender Diamond jumped up and said "shoot" and started to put her private parts back into her pants. Both offenders then sat on the side of the bed. I separated them by directing Diamond to come out of the cell and offender John Doe to remain in the cell.

9. I then radioed to main control to notify the shift supervisor Lieutenant Reeves.

10. Lieutenant Reeves responded and arrived at N building within two or three minutes. I told Lieutenant Reeves what had occurred.

11. Lieutenant Reeves called the Duty Officer who I recall was Unit Manager Mack. I spoke with UM Mack on the phone inside of the N building control room. UM Mack asked what occurred and I told her. She asked for detail on what I saw and who was notified and what other steps had been taken, and I gave her that information. After the phone call Lieutenant Reeves directed me to complete a witness statement and a disciplinary report and I completed those items and gave them to Lieutenant Reeves before the end of my shift that same day. Lieutenant Reeves also asked me to get offender John Doe to the medical unit.

12. **Attachment 1** hereto is a true and correct copy of the witness statement that I completed about this incident on October 31, 2020. Nobody told me how to write the statement or what to write in the statement. I wrote the witness statement based on what I saw that day. The details in the statement are

accurate, except that as I review the statement today, I cannot say that I saw offender Diamond's penis inside the other offender's anus, but I wrote that because that is what I believed was occurring based on what I saw.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 02 May 2021

Courtney S Brown
COURTNEY BROWN

ATTACHMENT 1

WITNESS STATEMENT			
PLACE Coastal State Prison	DATE 10-31-2020	TIME	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME BROWN, Courtney		EMPLOYEE ID NUMBER 01102806	STATE ID NO.
INSTITUTION OR ADDRESS Coastal State Prison			
SWORN STATEMENT			
<p><u>Courtney Brown</u> WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH: On October 31, 2020 at approximately 0840hrs, I Officer Courtney Brown entered N Building B-Range to count. When I approached room #136, I observed offender Diamond on top of offender [redacted] on the bottom bunk. Both offenders had their pants down. Offender Diamond's penis was inside of offender [redacted] and they were moving in a back and forth motion. I opened the door to room #136 Neither offender moved. I then yelled "Aye". Both offender Diamond and [redacted] jumped up and pulled their pants up. Offender Diamond stated "Oh shoot". Both offenders then sat on the bed. I then informed them that they both could not stay in the room together. Both offender [redacted] and Diamond then put on their shoes. I separated the offenders. I instructed offender [redacted] to stay in the room then I escorted offender Diamond to the lobby. I then notified Sgt. Alexander whom notified Lt. Reeves.</p>			
EXHIBIT	INITIALS OF PERSON MAKING STATEMENT CSB		PAGE 1 OF 1 PAGES
<p>ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF ___ TAKEN AT ___ DATED ___ CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE 1 OF 1 PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.</p>			

(Reproduced locally)

Retention Schedule: Upon completion, this form shall be maintained locally for three (3) years, with the Incident Report, and then destroyed.

STATEMENT (Continued)

AFFIDAVIT

I, Courtney Brown HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 1. I FULLY UNDERSTAND THE CONDITIONS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Courtney S Brown

(Signature of Person Making Statement)

WITNESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this ___ day of _____, 20__ at _____

INSTITUTION OR ADDRESS

(Signature of Person Administering Oath)

INSTITUTION OR ADDRESS

(Typed Name of Person Administering Oath)

(Authority to Administer Oath)

INITIALS OF PERSON MAKING STATEMENT

CSB

PAGE | OF | PAGES

DECLARATION OF DR. MARC WEINSTEIN

I, Marc Weinstein, declare as follows:

1. My name is Dr. Marc Weinstein, and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true and give this declaration freely and for use as evidence in the case styled *Ashley Diamond v. Timothy Ward*, Case No. 5:20-cv-453, in the United States District Court for the Middle District of Georgia.

2. I am currently the Interim Statewide Mental Health Director and Chief Psychologist for the Georgia Department of Corrections (“GDC”). As Interim Statewide Mental Health Director and Chief Psychologist, my duties include planning and assisting in the development and implementation of mental health related policies and procedures; overseeing the monitoring and evaluation of mental health programs; and planning, organizing, directing, and coordinating the delivery of mental health services in GDC facilities that provides those services.

3. A true and correct copy of GDC Standard Operating Procedure (“SOP”) 220.09 has been filed herewith under seal as Exhibit 9. As shown by this SOP, GDC has a standard operating procedure specific to the classification and management of transgender and intersex offenders, including offenders with gender dysphoria. GDC’s policy is to provide medical and mental health treatment to transgender offenders and offenders with gender dysphoria. GDC offenders who have gender dysphoria or who self-identify as transgender receive medical and mental health evaluations from licensed and qualified professionals, which includes an assessment of the offender’s treatment and life experiences prior to and during his or her incarceration.

4. All offenders, including those with gender dysphoria or who self-identify as transgender, undergo a mental health reception screening by a mental health counselor or behavior therapist upon their arrival at a diagnostics and classification facility. This screening assesses for potential mental health problems and includes a question about the offender's gender identity, including transgender or intersex. If the mental health counselor or behavior specialist notes gender identity issues, the offender is referred for further evaluation. If an offender has gender dysphoria or self-identifies as transgender, following an evaluation by a psychologist, psychiatrist, or Advanced Practice Registered Nurse ("APRN"), a treatment plan is developed to promote the offender's physical and mental health. GDC medical and mental healthcare providers are qualified to treat the medical or mental health needs of offenders, including offenders with gender dysphoria or who self-identify as transgender.

5. GDC provides all offenders, including offenders who are transgender, with individualized assessments and care, including necessary and appropriate mental health services and, when warranted, hormone treatments throughout their incarceration. GDC ensures that all gender-related hormone treatments that may be provided while the offender is in custody occur after an individualized assessment of the offender by a medical practitioner. GDC medical practitioners monitor each offender's care and treatment and adjust hormone levels and dosages as determined by an endocrinologist.

6. A true and correct copy of the mental health records of offender Ashley Diamond, GDC No. 1000290565, has been filed herewith under seal as Exhibit 4. These mental health records are confidential and are kept separate from an offender's custody records and stored in a secure area under the control of the Mental Health Unit Manager.

7. These records reflect that offender Diamond has a principal diagnosis of major depressive disorder and secondary diagnoses of post-traumatic stress disorder (“PTSD”), gender dysphoria, and bipolar disorder. In accordance with GDC SOP 220.09, upon entering into GDC custody, a Mental Health Screening form was completed. Offender Diamond was designated Mental Health Level II, and a comprehensive treatment plan was developed to meet offender Diamond’s mental health needs.

8. The mental health records show that offender Diamond is provided with mental health treatment by a Mental Health Treatment Team of qualified practitioners, including mental health unit managers, clinical psychologists, psychiatrists, APRNs, licensed professional counselors, licensed master or clinical social workers, mental health counselors, and activity therapists.

9. Offender Diamond also receives psychiatric medications including Remeron (Mirtazapine) and Trazadone to treat her depression, and Lithium and Abilify (Aripiprazole) to treat her major depressive disorder and bipolar disorder. Offender Diamond’s psychiatric medications are prescribed by her mental health care providers and administered by medical personnel at Coastal State Prison. In addition to psychiatric medications, offender Diamond regularly meets with a mental health counselor and a licensed psychologist to discuss her gender dysphoria and related symptoms.

10. I am aware of offender Diamond’s reported history of suicide attempts prior to her time in GDC custody as documented in the Mental Health Screening form. I am also aware that offender Diamond contends she has become depressed, anxious, hopeless, and suicidal due to allegedly inadequate care for her gender dysphoria as well as her contention that mental health counselors are unqualified to treat her gender dysphoria, stating for instance that “instead of

having a real counseling session, [she] just receive[s] the occasional Sudoku puzzle or coloring sheets.”

11. Contrary to offender Diamond’s contentions, her mental health records reflect that she meets regularly with a mental health counselor and a licensed psychologist to discuss her gender dysphoria and related symptoms. In each of these sessions, her care providers have questioned offender Diamond about whether she is presently experiencing suicidal ideations. The mental health records reflect that offender Diamond has generally denied experiencing suicidal ideations. The mental health records also reflect that in each of these sessions, offender Diamond has been provided counseling and therapy to target her gender dysphoria and related symptoms.

12. I am also aware of offender Diamond’s assertion that she has been the victim of numerous sexual assaults while at Coastal State Prison and that she has spoken with her mental health care providers about these alleged assaults.

13. GDC SOP 508.22, a true and correct copy of which has been filed herewith under seal as Exhibit 10, addresses the mental health management of suspected sexual abuse or sexual harassment in accordance with the Prison Rape Elimination Act (“PREA”) and provides that offenders suspected of being the victims of sexual assault, abuse, contact, or harassment must receive a mental health evaluation and be referred for treatment as clinically indicated. In accordance with this SOP, a mental health care provider has met with offender Diamond after each reported incident of alleged sexual assault or harassment. The mental health records reflect that offender Diamond has often refused to speak to mental health care providers who have attempted to conduct a mental health evaluation after a reported incident of an alleged sexual assault.

14. In one such instance, a mental health counselor attempted to complete a mental health PREA evaluation but was told by offender Diamond that her attorneys had advised her to only speak on PREA-related matters in consultation with them. When the mental health counselor attempted a second time to complete the mental health PREA evaluation several days later, offender Diamond stated, “I do want to talk about it, but my lawyers want to me to wait so I’m going to do that.” When the mental health counselor attempted a third time to complete the mental health PREA evaluation several days later, she was told by offender Diamond that her attorneys had advised her to “wait.” True and correct copies of the Mental Health Progress Notes memorializing these encounters have been filed herewith under seal as Exhibit 20.

15. Finally, I am aware of offender Diamond’s contention that her mental health care providers have recommended that she be designated Mental Health Level III. Mental Health Level III designation requires transfer to a facility with a Supportive Living Unit (“SLU”) specifically designed to serve the needs of seriously mentally ill offenders who are unable to live and function effectively in the general prison population due to the nature of their mental illness. Transfer to a SLU necessarily involves security considerations that are outside the province of mental health care providers.

16. However, any psychologist, psychiatrist, or APRN may admit an offender to a specialized Acute Care Unit (“ACU”) or Crisis Stabilization Unit (“CSU”) if the admitting provider deems it necessary to house the offender in such a location due to an acute crisis. Thus, offender Diamond’s mental health care providers can admit her to the ACU/CSU if a higher level of mental health observation or treatment is medically warranted without implicating the security considerations involved in a permanent transfer to a SLU.

level of mental health observation or treatment is medically warranted without implicating the security considerations involved in a permanent transfer to a SLU.

17. I am not aware of any determination, finding, or formal recommendation by a medical or mental health care provider that placement in a female facility is medically necessary to treat offender Diamond's gender dysphoria, nor have I made a separate determination, finding, or formal recommendation that placement in a female facility is medically necessary.

18. Offender diamond continues to receive treatment for gender dysphoria as recommended and deemed necessary by her mental health care providers, including regular counseling and therapy and psychiatric medications. The mental health records reflect that offender Diamond has a comprehensive treatment plan to address her gender dysphoria (among her other conditions) and that her treatment plan is periodically reviewed and updated by her mental health care providers. Offender Diamond's condition is stable with treatment presently provided for gender dysphoria.

19. I am familiar with the information and records maintained by GDC medical and mental health personnel. The records referenced herein and attached hereto are made at or near the time of the information reflected therein by a person with knowledge of the information, they are kept in the regular course of business, and it is the regular practice of GDC to make and maintain such records.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 3 day of May, 2021.


MARC WEINSTEIN, PH.D.

DECLARATION OF DR. SHARON LEWIS

I, Sharon Lewis, declare as follows:

1. My name is Dr. Sharon Lewis, and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true and give this declaration freely and for use as evidence in the case styled *Ashley Diamond v. Timothy Ward*, Case No. 5:20-cv-453, in the United States District Court for the Middle District of Georgia.

2. I am currently the Statewide Medical Director for the Georgia Department of Corrections (“GDC”). As Statewide Medical Director, my duties include overseeing the electronic review of requests for medical services from the prison clinicians, facilitating the coordination of complicated medical services, and overseeing the medical grievance appeal review process.

3. A true and correct copy of GDC Standard Operating Procedure (“SOP”) 220.09 has been filed herewith under seal as Exhibit 9. As shown by this SOP, GDC has a standard operating procedure specific to the classification and management of transgender and intersex offenders, including offenders with gender dysphoria. GDC’s policy is to provide medical and mental health treatment to transgender offenders and offenders with gender dysphoria. GDC offenders who have gender dysphoria or who self-identify as transgender receive medical and mental health evaluations from licensed and qualified professionals, which includes an assessment of the offender’s treatment and life experiences prior to and during his or her incarceration.

4. All offenders, including those with gender dysphoria or who self-identify as transgender, are initially referred to medical personnel for a review of their medical needs. If an

offender has gender dysphoria or self-identifies as transgender, a treatment plan is developed to promote the offender's physical and mental health. GDC medical and mental health care providers are qualified to treat the medical or mental health needs of offenders, including offenders with gender dysphoria or who self-identify as transgender.

5. GDC provides all offenders, including offenders who are transgender, with individualized assessments and care, including necessary and appropriate mental health services and, when warranted, hormone treatments throughout their incarceration. GDC ensures that all gender-related hormone treatments that may be provided while the offender is in custody occur after an individualized assessment of the offender by a medical practitioner. GDC medical practitioners monitor each offender's care and treatment and adjust hormone levels and dosages as determined by an endocrinologist. Only medical practitioners make decisions regarding gender-related hormone treatment needs.

6. A true and correct copy of the medical records of offender Ashley Diamond, GDC No. 1000290565, has been filed herewith under seal as Exhibit 3. These medical records are confidential and are kept separate from an offender's custody records and stored in a secure area under the control of the facility Health Services Administrator.

7. These records reflect that offender Diamond has a reported diagnosis of gender dysphoria and self-identifies as transgender. In accordance with GDC SOP 220.09, upon entering into GDC custody, offender Diamonds' mental health care providers submitted a referral to consider her for hormone treatments. Based on this referral, it was determined that specialty consultation with an endocrinologist was needed to determine offender Diamond's medical need for hormone treatments. A request for consultation with an endocrinologist was submitted on offender Diamond's behalf and promptly approved by GDC.

8. The medical records show that offender Diamond continues to receive hormone treatments as part of her treatment for gender dysphoria. Offender Diamond's hormone treatments are determined and prescribed by an endocrinologist and then administered by medical personnel at Coastal State Prison.

9. I am aware of offender Diamond's assertions that she has had difficulty accessing hormone therapy and that the hormone therapy she is receiving is erratic and unmonitored and has sometimes been delayed for weeks at a time.

10. Contrary to this assertion, Medical Consultation requests submitted on behalf of offender Diamond, true and correct copies of which are filed herewith under seal as Exhibit 19, show that offender Diamond has been seen by an endocrinologist on at least three occasions (February 19, 2020; June 17, 2020; and April 21, 2021) for monitoring, medication adjustments, and management of her hormone treatments since entering into GDC custody.

11. These records further reflect that Offender Diamond was last seen by an endocrinologist on April 21, 2021. At that time, a request for a follow-up consultation was submitted on offender Diamond's behalf and promptly approved by GDC. Offender Diamond is currently scheduled to meet with an endocrinologist again on August 4, 2021.

12. For each consultation, blood work was completed allowing the endocrinologist to monitor offender Diamond's hormone levels and to adjust the dosages of her hormone treatments as medically warranted. True and correct copies of offender Diamond's blood test results are filed herewith under seal as Exhibit 17.

13. Offender Diamond's medical administration records ("MARs"), true and correct copies of which are filed herewith under seal as Exhibit 16, show that she has consistently been receiving hormone treatments. Currently, offender Diamond receives a bi-weekly dosage of

Estradiol, an estrogen derivative, and a twice-daily dosage of Spironolactone, a testosterone blocker, to treat her gender dysphoria.

14. It appears from the medical records that offender Diamond's endocrinologist has established a plan to review her lab work and meet with her on a recurring three-month basis. However, it appears from the medical records that offender Diamond did not have a consultation with the endocrinologist from June 17, 2020, until April 21, 2021. While the reason for this is not apparent in the medical records, medical consultations of this kind are occasionally delayed for a variety of reasons related to the operation of a secure prison setting. In any event, as stated above, the medical records show that offender Diamond was receiving hormone medication throughout this time period.

15. In addition to hormone treatment, offender Diamond's medical records show that she is seen regularly by medical care providers for a variety of complaints (including those related to gender dysphoria), each time receiving consultation, assessment, and treatment as determined by her providers.

16. I am aware of offender Diamond's history of self-castration attempts as documented in her medical records and her assertion that she has suffered cuts and bruises on her genital area that have become severely infected as well as sustained damage to her urethra that has made it difficult for her to urinate.

17. The medical records reflect that offender Diamond has been treated on several occasions for complaints of injuries resulting from attempts at self-castration. These records also reflect that offender Diamond has often refused to allow her medical care providers to examine her or to provide the recommended treatment.

18. In one such instance, offender Diamond complained to medical care providers that she was experiencing difficulty urinating after an attempt to self-castrate by tying a band around her genital area. When her medical care providers explained that they needed to examine the area and perform a catheterization to release the bladder, offender Diamond responded “I don’t have time for this,” and “When I need medical, I’ll put in a sick call to medical.” When her medical care providers further explained that an examination was needed for health and safety reasons, offender Diamond denied any attempt to self-castrate, stating, “If I have to do all of that then I’m not banded.” True and correct copies of the Medical Progress Records memorializing this encounter are filed herewith under seal as Exhibit 18.

19. The medical records further reflect that offender Diamond has repeatedly refused her medical care provider’s recommendations for treatment to alleviate her difficulty urinating despite repeated warnings that the decision to refuse treatment could potentially lead to kidney failure. To be clear, while it was proper for the medical personnel to give this warning, the medical records do not indicate that offender Diamond has experienced kidney failure.

20. I am also aware of offender Diamond’s assertion that she has attempted suicide multiple times since entering into GDC custody, including by overdosing on medication, poisoning herself by drinking chemicals, starving herself, or attempting suicide by hanging. This assertion is unsupported by offender Diamond’s medical records, which do not contain any medical encounter forms, progress records, physician’s orders, or other document reflecting that offender Diamond has received medical treatment for a suicide attempt while in GDC custody.

21. Lastly, I am aware of offender Diamond’s assertion that I have denied her access to medically necessary treatments for her gender dysphoria, including medicated hair removal products. On July 16, 2020, I was contacted via email by Dr. Olatunji Awe, medical director at

CSP, regarding offender Diamond's specific request to receive Vaniqa—a prescription-only topical product marketed for the removal of unwanted facial hair in women. Vaniqa is a cosmetic product not listed in the GDC formulary and therefore not approved for issuance to male or female offenders in GDC custody. Furthermore,

22. I am not aware of any determination, finding, or formal recommendation by a medical or mental health care provider that medicated hair removal products are medically necessary to treat offender Diamond's gender dysphoria. To my knowledge, none of offender Diamond's medical or mental health care providers have submitted a referral or consultation request for medical intervention for gender dysphoria beyond what offender Diamond is already receiving. The only consultation requests submitted concerning offender Diamond's gender dysphoria have been requests for hormone treatments and consultations with an endocrinologist, all of which have been approved.

23. I am furthermore not aware of any determination, finding, or formal recommendation by a medical or mental health care provider that placement in a female facility is medically necessary to treat offender Diamond's gender dysphoria, nor have I made a separate determination, finding, or formal recommendation that placement in a female facility is medically necessary.

24. Offender Diamond continues to receive treatment for gender dysphoria as recommended and deemed necessary by her medical and mental health care providers, including hormone treatments. The medical records reflect that offender Diamond has a comprehensive treatment plan to address her gender dysphoria (among her other conditions) and that her treatment plan is periodically reviewed and updated by her medical care providers. Offender Diamond's condition is stable with treatment presently provided for gender dysphoria.

treatment plan is periodically reviewed and updated by her medical care providers. Offender Diamond's condition is stable with treatment presently provided for gender dysphoria.

25. I am familiar with the information and records maintained by GDC medical and mental health personnel. The records referenced herein and attached hereto are made at or near the time of the information reflected therein by a person with knowledge of the information, they are kept in the regular course of business, and it is the regular practice of GDC to make and maintain such records.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 3rd day of May, 2021.


SHARON LEWIS, M.D.

DECLARATION OF GRACE ATCHISON

I, Grace Atchison, declare as follows:

1. My name is Grace Atchison and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true, and I give this declaration freely and for use as evidence in the case styled *Ashley Diamond v. Timothy Ward*, Case No. 5:20-cv-453 in the U.S. District Court for the Middle District of Georgia.

2. I am employed by the Georgia Department of Corrections (GDC) and serve as the Statewide Prison Rape Elimination Act (PREA) Coordinator under GDC Standard Operating Procedure 208.06, and as the Chairperson of the Statewide Classification Committee under GDC Standard Operating Procedure 220.09, each as described below.

Classification and Placement

3. **Attachment 1** hereto is a true and correct copy of GDC Standard Operating Procedure 220.09, entitled Classification and Management of Transgender and Intersex Offenders, a policy with an effective date of July 26, 2019.

4. SOP 220.09 by its terms provides guidance and direction for the classification and management of transgender offenders. It provides for a process for the initial intake and assessment of transgender offenders, including medical and mental health assessments, a classification interview the purpose of which is to collect information from the offender and also to explore the offender's concerns and preferred facility placement, and ultimately a determination by a Statewide Classification Committee on the proper placement for the offender. I am the designated Chairperson of the Statewide Classification Committee.

5. Offender Ashley Diamond began her current period of incarceration on October 29, 2019. In November 2019 I conducted a classification interview with offender Diamond at the Georgia Diagnostic and Classification Prison. The interview was recorded and the audio recording is submitted along with the remainder of the Classification Committee documentation which I understand will be filed with the Court under restricted access for Diamond's privacy and so are not attached directly to this declaration.

6. In the interview offender Diamond initially indicated a preference for a placement in a female facility. However, she later clarified that, in her prior period of incarceration, the problems that she had related to her classification and her placement in close security prisons. She stated in the interview that being housed with male offenders was not so much of a concern as the classification, and she indicated comfort with a housing placement in a medium security men's prison. She also stated in the interview that she had an earlier conversation to this effect with the GDCP Warden and GDC's Director of Facility Operations, Robert Toole.

7. After the interview, I collected the recommendations from the GDCP officials and I also wrote a summary of my findings. These documents also are being filed with the Court under restricted access for Diamond's privacy and so are not attached directly to this declaration. My housing recommendation as stated in the summary was neutral because Diamond expressed some interest in placement in a female facility, the GDCP official recommendation was to go with that preference, but also Diamond clarified in the interview that she was ok with a placement into a medium security men's prison.

8. After I completed the interview and summary I did not have further involvement with offender Diamond's placement. Generally offender placement is decided by Offender Administration, a GDC office, and for transgender offenders because of the process provided in SOP 220.09 the Director of Facility Operations, Mr. Toole, and also GDC's Assistant Commissioner for the Facilities Division,

Ahmed Holt, will review any recommendation and will consider the proper placement of a transgender offender given the unique security needs that such a placement involves.

PREA Reports and Investigations

9. **Attachment 2** hereto is a true and correct copy of GDC Standard Operating Procedure 208.06, entitled Prison Rape Elimination Act (PREA) Sexually Abusive Behavior Prevention and Intervention Program, a policy with an effective date of March 2, 2018.

10. SOP 208.06 states that GDC has a “zero-tolerance policy toward all forms of sexual abuse, sexual harassment, and sexual activity among offenders.” The goal of the policy and its various provisions is to prevent occurrences of both offender to offender and staff to offender sexual abuse and sexual harassment. The policy also makes clear that retaliation is not permitted.

11. SOP 208.06 has definitions of sexual abuse by an offender, sexual abuse by a staff member, contractor, or volunteer, and sexual harassment. Sexual abuse in these definitions includes: contact between the penis and the vulva or the penis and the anus, including penetration, however slight; contact between the mouth and the penis, vulva, or anus; penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and any other touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation. Additional categories of prohibited conduct are included within the definition of staff to offender sexual abuse, including contact between the mouth and any body part where there is intent to abuse, arouse, or gratify sexual desire; any display by a staff member of his or her uncovered genitalia, buttocks, or breast in the presence of an offender; and voyeurism by a staff member, meaning invasion of privacy for reasons unrelated to official duties.

12. Sexual harassment in the definitions includes repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender toward another; and also repeated verbal comments or gestures of a sexual nature to an offender by a staff member, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

13. SOP 208.06 states that offenders who sexually abuse another offender will be disciplined and referred for criminal prosecution, and offenders who engage in sexual harassment, consensual sexual contact with another offender, attempt to engage in or solicit such contact, or help another engage in sexual contact with an offender will be disciplined.

14. SOP 208.06 expressly states that GDC prohibits all consensual sexual activity between offenders, and that offenders may be subject to disciplinary action for such activity. It further states that offenders shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the offender engaged in offender-on-offender sexual abuse or sexual harassment or a criminal finding of guilt for offender-on-offender sexual abuse.

15. SOP 208.06 calls for the designation of a GDC department level PREA Coordinator to implement and oversee the efforts to comply with these PREA standards at all GDC facilities. As stated previously, I am the GDC Statewide PREA Coordinator. In that capacity, I am responsible for and oversee the PREA operations of 88 facilities statewide. This includes ensuring compliance with SOP 208.06; having general oversight of facility investigations, which can include on a case-by-case basis coordinating, overseeing, or providing direction for facility investigations; and reviewing facility investigations to make sure that they are handled correctly.

16. SOP 208.06 also calls for the Warden/Superintendent at each facility to ensure implementation of the policy and also requires that each facility must have an assigned PREA Compliance

Manager. At Coastal State Prison, Deputy Warden of Care and Treatment Carl Betterson is the PREA Compliance Manager.

17. SOP 208.06 has provisions for offender and staff training and education, and these provisions are implemented for offenders and staff at every facility. Therefore, offenders are made aware of PREA and their rights including the non-retaliation provisions of the policy, and likewise staff are made aware of PREA and their obligations including the non-retaliation provisions of the policy.

18. SOP 208.06 states that an offender may make a report of sexual abuse, sexual harassment, or retaliation either in writing or verbally, and either by internal (from within the facility) or external (from outside the facility) methods. Offenders are encouraged to report allegations immediately and directly to a staff member, so that the allegations can be promptly documented and investigated and so that any necessary protective or corrective measures can be taken.

19. When a report is made, it will be documented and investigated at the facility through the PREA Compliance Manager and what is known as the facility Sexual Abuse/Harassment Response Team or SART. Possible outcomes of an investigation include: substantiated, meaning the allegation was investigated and determined to have occurred; unsubstantiated, meaning the allegation was investigated and the investigation produced insufficient evidence to make a final determination as to whether it occurred; and unfounded, meaning the allegation was investigated and determined not to have occurred. There is a fourth possible outcome that can be entered upon review by the Statewide PREA Coordinator, and that outcome is "not PREA," or essentially a determination that the allegation does not involve sexual abuse or sexual harassment as those terms are defined in the policy.

20. I am aware of offender Ashley Diamond's assertions that she has been subjected repeatedly to sexual abuse, sexual harassment, or sexual assault at Coastal State Prison. I am aware of reports but no substantiated finding for any incident.

21. Specifically, as relates to PREA complaints, I am aware of 13 reports where offender Diamond is the alleged victim, and 1 report where Diamond is the alleged aggressor.

22. Of the 13 reports where offender Diamond is the alleged victim, the GDC PREA records for this period of incarceration, which I understand will be filed with the Court under restricted access for Diamond's privacy and so are not attached directly to this declaration, show the following:

- **March 12, 2020** – Diamond alleged that a nurse Lucas at Georgia Diagnostic and Classification Prison grabbed her breasts and asked if they were real; nurse Lucas admitted to touching Diamond on the shoulder but otherwise denied the allegation; the local SART deemed the allegation not PREA, however, I would deem the allegation PREA; nurse Lucas was moved to another work location; ultimately this allegation was unsubstantiated because after investigation it could not be proven or disproven; the PREA records show that there was an investigation (OPS Investigation # 2020-0912) into this allegation by GDC's Office of Professional Standards (OPS).
- **May 9 or 10, 2020** – Diamond alleged by letter from her legal counsel that, also at GDCP, correctional officer Arneika Smith locked Diamond in a room and subjected her to questioning related to her sexual orientation and touched Diamond's legs, thighs, and buttocks; the PREA records show that there was an investigation (OPS Investigation # 2020-1674) into this allegation by OPS; OPS conducted interviews and also asked the Georgia Bureau of Investigation to conduct a polygraph examination of CO Smith due to conflicting statements given by Diamond and another correctional officer (Ridley), on the one hand, and statements given by correctional officer Smith, on the other hand; the polygraph examination was completed and returned showing no deception by CO Smith; the local district attorney declined to pursue criminal charges; due to a lack of

evidence, the allegations of sexual abuse and sexual misconduct were determined to be unsubstantiated; it should be noted that whether or not there was a policy violation by CO Smith is a separate matter.

- **June 18, 2020** – Diamond alleged that, at Coastal State Prison, Unit Manager Jackson called her a man and made comments about her breasts and genitalia; she further alleged that upon moving to a dormitory other offenders told her that UM Jackson held a dormitory meeting where he warned that a “freak is about to enter the dorm”; local SART deemed the first part of the allegation not PREA on the basis of the definition of harassment requiring repeated instances; local SART also deemed the second part of the allegation not PREA; in review of this incident I communicated with DW Betterson to convey that UM Jackson should be counseled on professional and PREA behavior expectations; I learned that Coastal State Prison Warden Brooks Benton communicated with UM Jackson and that Jackson was assigned to work another post; also it is my understanding that UM Jackson no longer works at Coastal State Prison; this is Incident Report 311169 and PREA # 5060 in the records.
- **July 3, 2020** – Diamond alleged by letter from her legal counsel that, at Coastal State Prison, there was a sexual assault and attempted rape of her perpetrated by an offender who was not authorized to be in the dormitory but who was let into the dormitory by a correctional officer, and two offenders stopped the alleged attack; facility officials attempted to investigate this allegation when it was made; however, Diamond refused to discuss the allegation on two occasions, stating she wanted her attorneys present; she did finally give a statement to a mental health counselor that an offender she did not know “went into my room and tried to pull down my pants and stick his penis inside

me” and “my friends pulled him off me and he left”; because Diamond did not cooperate in the investigation the allegation could not be substantiated and the allegation was determined to be unfounded; this is Incident Report 314985 and PREA # 5251 in the records.

- **September 1, 2020** – Diamond reported “several PREA allegations”; the incident report states that Diamond alleged that DW Betterson called her a “cancer to the prison” and also addressed her “window coverings”; Diamond again refused to participate in PREA interviews; SART deemed the case to be unfounded, due to Diamond’s refusal to cooperate in the investigation; the allegations as described in the incident report do not specify a sexual abuse or sexual harassment incident as those terms are defined SOP 208.06; this is Incident Report 310677 and PREA # 5038 in the records.
- **September 1, 2020** – Diamond alleged that, at Coastal State Prison, Lieutenant Giddell (a male officer) stripped searched her, and also that he told her that no one could be in her dorm because of her lifestyle; SART determined the allegation to be not PREA, a correct finding; this is Incident Report 310716 and PREA # 5044 in the records.
- **September 18, 2020** – Diamond alleged by letter from her legal counsel that, at Coastal State Prison, she was sexually assaulted four times in one weekend; the allegations were as follows: Allegation # 1 (September 18) – an unnamed inmate lured Diamond to her room, where her “attacker” was waiting. He locked the door, ripped off her shirt, and proceeded to grab her breasts and sexually assault her. He then pushed her to the bed and attempted to forcibly rape her. Diamond was able to escape, due to the count beginning; Allegation #2 (September 19) – another “incarcerated inmate” entered her

room, physically grabbed her head, and forced her to give him oral sex on the bed; Allegation #3 (September 20) – the unnamed inmate that lured Diamond to her room on the September 18 incident raped her; Allegation #4 (September 20) – “another incarcerated person” attacked her by grabbing her breasts, groped her, and sexually assaulted her until she was able to escape the room; the facility SART was immediately notified of these allegations and directed to initiate an investigation; however, Diamond refused to cooperate in the interview process; SART deemed the allegations to be unfounded due to the lack of cooperation; this is Incident Report 311506 and PREA # 5087 in the records.

- **October 10, 2020** – Diamond alleged that, at Coastal State Prison, an offender (Thigpen) told her that another unknown offender (later identified as Christopher Graham) was touching Diamond’s buttocks while she was asleep; Diamond stated she was not aware of this because her medication did not allow her to wake up; the local SART deemed the allegation unfounded on the basis that offender Graham was not in Diamond’s dormitory; this is Incident Report 312555 and PREA # 5138 in the records.
- **October 29, 2020** – Diamond alleged that, at Coastal State Prison, offender Graham approached her stating that he was aware that she had made a PREA allegation against him; the content of the alleged statement would not meet the criteria for a PREA allegation; this is Incident Report 313860 and PREA # 5187 in the records.
- **October 30, 2020** – Diamond alleged that, at Coastal State Prison, offender Thigpen exposed himself to her and touched her inappropriately; a dorm mentor advised staff that Thigpen admitted to exposing himself to Diamond; the facility SART determined the abuse case to be unsubstantiated, however, the facility PREA Compliance Manager

stated it should be substantiated, as it likely occurred; on this case, although the evidence weighs that Thigpen did indeed expose himself to Diamond, it does not meet the definition of sexual abuse or sexual harassment, as it was not a recurring incident; the inappropriate touching allegation could not be proven, nor disproven; the final disposition of this allegation is unsubstantiated; this is Incident Report 313863 and PREA # 5188 in the records.

- **October 31, 2020** – Diamond reported that she was strip searched by two male officers; she stated that there was no physical contact but the upper portion of her body was visually inspected by a male security officer; this case is not PREA because the officers were following proper strip search procedures, specifically the allegations do not show a violation and instead show compliance with SOP 208.06 and SOP 220.09 as related to offender searches; this is Incident Report 313869 and PREA # 5190 in the records.
- **February 18, 2021** – Diamond stated via JPay email that she wanted to make an allegation against Sergeant Mitchell at Coastal State Prison; the facility SART investigated the allegation; Diamond's allegation was that Sgt. Mitchell did not knock before opening her cell door; SART deemed the allegation unfounded because it was inconsistent with video showing that Sgt. Mitchell did knock and that a short time later Diamond came out of her cell fully clothed; this allegation did not meet the SOP 208.06 definition of voyeurism as Sgt. Mitchell was acting within the scope of his duties; this is Incident Report 319871 and PREA # 5488 in the records.
- **March 29, 2021** – Diamond alleged via JPay email that, at Coastal State Prison, while showering a fan was turned toward the shower causing the curtain to fly open leaving her exposed to the entire dorm; the facility SART has not made a final disposition of

this allegation so it is not known if there was offender misconduct; however, the use of a screen or curtain for privacy in the shower would be consistent with GDC SOP 220.09; this is Incident Report 322588 and PREA # 5627 in the records.

23. As stated, offender Diamond also is the subject of one PREA matter where she is the alleged aggressor. This is Incident Report 315578 and PREA # 5297 in the records. In this incident offender Diamond was caught by a dorm officer engaged in a sexual act with another offender. The other offender has given inconsistent statements in the PREA investigation process, and Diamond has denied the offense. Because in the investigation it could not be proved or disproved that the sexual conduct was consensual, the PREA case is unsubstantiated. However, because the sexual activity was witnessed by an officer, a disciplinary report was written and after hearing and appeal she received an adverse finding.

PREA Risk Screening and PREA Victim/Aggressor Findings

24. SOP 208.06 provides for regular screening of offenders for PREA risk, and SOP 220.09 further provides that transgender offenders' risk levels will be re-assessed within thirty days of an intake date, after new information is learned that bears upon sexual safety, and in any event not less than two times in every year of their incarceration.

25. In her current period of incarceration, Offender Diamond has had multiple PREA risk screenings. These risk screenings are shown in summary form on a Victim/Aggressor Classification sheet, and on individual date Offender PREA Classification Details, which I understand will be filed with the Court under restricted access for Diamond's privacy and so are not attached directly to this declaration.

26. These documents show that offender Diamond was classified as a PREA victim on the following dates: October 30, 2019, February 21, 2020, June 11, 2020, September 4, 2020, and September 8, 2020.

27. The documents further show that offender Diamond was classified on assessment as both a PREA victim and aggressor on November 10, 2020 and January 15, 2021. The reason for the aggressor classification was the disciplinary report mentioned in paragraph 23 above. As Statewide PREA Coordinator, I concur with the risk assessment of offender Diamond as both PREA victim and PREA aggressor based on that disciplinary report which as stated was premised on an officer witnessing Diamond engaged in sexual activity which is prohibited.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 05/03/2021



GRACE ATCHISON

ATTACHMENT 1

GEORGIA DEPARTMENT OF CORRECTIONS Standard Operating Procedures		
Policy Name: Classification and Management of Transgender and Intersex Offenders		
Policy Number: 220.09	Effective Date: 07/26/2019	Page Number: 1 of 20
Authority: Commissioner	Originating Division: Facilities Division	Access Listing: Level I: All Access

I. Introduction and Summary:

The purpose of this policy is to provide guidance and direction for the classification and management of offenders identified as transgender and intersex. Furthermore, this policy was established to ensure compliance with requirements of the Prison Rape Elimination Act (PREA).

II. Authority:

- A. O.C.G.A. § 16-6-5.1;
- B. 28 CFR Part 115, Prison Rape Elimination Act (PREA) Prisons and Jails Standards;
- C. Georgia Department of Corrections (GDC) Standard Operating Procedures (SOPs): 107.04 Risk and Needs Assessment, 206.01 Offender Personal Property, 208.06 Prison Rape Elimination Act (PREA) Sexually Abusive Behavior Prevention And Intervention Program, 209.01 Offender Discipline, 220.02 Security Classification, 220.03 Classification Committee, 220.05 Diagnostic Reception, Orientation, and Processing, 222.10 Security Procedures During Transport of Offenders, 226.01 Searches, Security Inspections, and Use of Permanent Logs, 226.02 Entry Security Procedures, 507.02.02 Confidentiality of Health Record and Release of Information 507.04.21 Health Assessment and Medical Diagnostics, 507.04.25 Health Screening Offender Transfers 507.04.58 Special Needs Treatment Planning, 507.04.68 Management and Treatment of Offenders Diagnosed with Gender Dysphoria, and 508.04.19 Receiving Screening, 508.14 Mental Health Reception Screen; and
- D. ACA Standards: 4-4181, 4-4278, 4-4403, and 4-4281.

III. Definitions:

- A. **Classification Committee** - A multi-disciplinary facility-based committee responsible for making bed, program, education, and work assignments considering the known information about each offender as described in SOPs 220.02 and 220.03.
- B. **Gender Dysphoria** - A mental health disorder characterized by clinically significant distress and impairment in social, occupational, or other important areas

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of functioning secondary to a marked incongruence between an individual's experienced/expressed gender and assigned gender. Not all transgender offenders have a diagnosis of gender dysphoria and a diagnosis of gender dysphoria is not required for an individual to be provided services.

- C. **Gender Identity** - Distinct from sexual orientation and refers to a person's internal sense of being male, female, or neither.
- D. **Intersex** - A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.
- E. **Medical or Mental Health Practitioner** - A health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice.
- F. **Prison Rape Elimination Act (PREA)** - A federal law to address sexual violence in prisons, jails, and other correctional facilities. Under PREA, the National Prison Rape Elimination Commission was created with the responsibility for establishing standards for the prevention, detection, response, and monitoring of sexual abuse and sexual harassment within correctional systems.
- G. **PREA Coordinator** - A GDC employee responsible for the statewide oversight of PREA standards, compliance with standards, training, data collection, and inspection.
- H. **PREA Compliance Manager** - A GDC employee designated at each GDC facility who is responsible to coordinate the facility's efforts to comply with the PREA policy and the federal PREA standards.
- I. **Sex** - One's anatomical make-up, including external genitalia, chromosomes, and reproductive system.
- J. **Statewide Classification Committee (SCC)** - A committee responsible for making case-by-case decisions about whether a transgender or intersex offender will be housed in a male or female facility. This committee is composed of

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statewide directors from Medical, Mental Health, Facilities Operations, PREA Coordinator's Office, Legal, and any other GDC staff designated by the Commissioner and deemed necessary to decide on offender placement.

- K. **Transgender/Intersex Offender List (TIOL):** A SCRIBE-based list that tracks all transgender and intersex offenders.
- L. **Transgender** - A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.
- M. **Transgender Female** - A person born biologically male who identifies as, and sees herself as, a female.
- N. **Transgender Male** - A person born biologically female who identifies as, and sees himself as, a male.

IV. **Policy and Applicable Procedures:**

A. Diagnostics:

1. An offender will initially be assigned to a diagnostics and classification facility by Offender Administration, appropriate to the assigned gender indicated in the Georgia Crime Information Center (GCIC);
2. When any offender arrives to a diagnostic facility staff must do the following prior to strip searches and showering:
 - a. Staff shall make the following notification statement to all offenders in a group, or to an individual offender if only one is present, "You are about to be strip searched. Before we do this, let us know if you have anything on you or about you we need to know before the search. This can be possession of items you should not have or are not sure you should have, or it could be a physical disability or other physical issue. If you need to declare anything to us before you are strip searched, raise your hand;"
 - b. If an offender raises his or her hand, the staff shall pull that offender aside and privately ask the offender what the facility should know;

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- c. The intent of this practice is to give the offender the opportunity to privately talk to a staff member if they choose to disclose they are transgender or intersex;
 - d. If the offender indicates he or she is transgender or intersex, staff must ensure he or she is allowed to shower separately; and
 - e. Strip searches and pat searches must be completed in accordance with section J of this policy.
3. GDC will screen all offenders within twenty-four (24) hours by using the PREA Sexual Victim/Sexual Aggressor Classification Screening Instrument in SCRIBE;
 4. A Mental Health Reception Screen form will be completed by a mental health counselor or behavior specialist in accordance with SOP 508.14 Mental Health Reception Screen;
 5. This screen will assess for potential mental health problems and gender identity, including transgender or intersex;
 6. If the mental health counselor or behavior specialist notes gender identity issues, the offender will be referred for further evaluation in accordance with SOP 508.14;
 7. Transgender offenders shall be notified that if they want hygiene or undergarment items that are not stored in diagnostics that they will receive what all other offenders receive and may receive those gender-specific property needs upon being housed in their permanent facility;
 8. Diagnostics staff will assist in gaining information about safe housing for transgender and intersex offenders by doing the following:
 - a. Staff will conduct a classification interview for each offender to explore:
 - i. Medical and mental health issues;

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- ii. Public and institutional risk factors;
 - iii. Educational;
 - iv. Vocational;
 - v. Drug or alcohol involvement;
 - vi. Work history;
 - vi. The PREA Sexual Victim/Sexual Aggressor Classification Screening;
 - vii. Any other areas pertinent to the needs and facility placement of the offender; and
 - viii. This information shall be used to complete the Personal Data Sheet on all offenders.
- b. Each area will be discussed in depth to develop the Classification Profile;
 - c. Specific recommendations will be made by the interviewer, relating to:
 - i. The offender's needs;
 - ii. Possible program assignments; and
 - iii. Housing placement.
 - d. If it is known that the offender is transgender or intersex on the sexual safety risk screening, then the diagnostics staff will complete the facility section of Attachment 1, Statewide Classification Committee (SCC) Referral Form and submit it to their Classification Committee for approval;
9. Once the Classification Committee is notified of the offender's status, the Chairperson must ensure the following is completed:

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- a. The Classification Chairperson will review and forward the approved Statewide Classification Committee Referral Form to the PREA Unit via prea.report@gdc.ga.gov;
- b. The Chairperson must enter the appropriate profile on the Transgender and Intersex Offender List (TIOL) in SCRIBE, which will include all intersex and transgender offenders in GDC custody;
- c. The Classification Committee will determine, on a case-by-case basis, the most appropriate classification assignments for each transgender offender;
- d. Transgender offenders must never be placed in dedicated units or housed only with other transgender offenders; and
- e. The offenders' own views with respect to their safety should be given serious consideration.

10. The GDC PREA Unit will:

- a. Ensure that the facility has entered the correct profile on the TIOL;
- b. Arrange a private meeting with the offender in person, via video or telephone call within ten 10 business days of receiving the Statewide Classification Committee Referral Form; and
- c. During the private meeting, the PREA Unit designee will complete the Transgender Questionnaire portion of the SCC Referral Form and make a recommendation to the remaining SCC Committee Members for review.

B. Non-Diagnostic Offender Procedure:

1. When any offender arrives to a facility, intake staff must do the following prior to strip searches and showering:
 - a. Staff shall make the following notification statement to all offenders in a group, or to an individual offender if only one is present, "You are about to be strip searched. Before we do this, let us know if you have anything

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on you or about you we need to know before the search. This can be possession of items you should not have or are not sure you should have, or it could be a physical disability or other physical issue. If you need to declare anything to us before you are strip searched, raise your hand;”

- b. If an offender raises his or her hand, the staff shall pull that offender aside and privately ask the offender what information they need to declare;
 - c. The intent of this practice is to give the offender the opportunity to privately talk to a staff member if they choose to disclose they are transgender or intersex;
 - d. If an offender indicates he or she is transgender or intersex, staff must ensure he or she is allowed to shower separately; and
 - e. Strip searches and pat searches must be completed in accordance with section J of this policy.
2. If at any time the offender discloses that he or she is transgender or intersex, the Warden must be notified immediately;
 3. The Warden shall immediately advise the Regional Director or female services director;
 4. The Regional Director or Female Services Director shall notify:
 - a. The Director of Facilities;
 - b. The Statewide Medical Director;
 - c. Statewide Mental Health Director; and
 - d. The Statewide PREA Coordinator.
 5. GDC will screen all offenders within twenty-four (24) hours of arrival, by using the PREA Sexual Victim/Sexual Aggressor Classification Screening Instrument in SCRIBE;

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6. If it is known that the offender is transgender or intersex on the PREA Sexual Victim/Sexual Aggressor Classification Screening Instrument, then staff will check the TIOL to ensure that the offender is on the list in SCRIBE;
7. If the offender is not on the TIOL, staff must complete the facility section of Attachment 1, Statewide Classification Committee (SCC) Referral Form and submit it to their Classification Committee for approval;
8. Once the Classification Committee is notified of the offender's status, the Chairperson must ensure the following is completed:
 - a. The Classification Chairperson will review and forward the approved Statewide Classification Committee Referral Form, to the PREA Unit, via prea.report@gdc.ga.gov;
 - b. The Chairperson must enter the appropriate profile on the Transgender and Intersex Offender List (TIOL) profile in SCRIBE, which will include all intersex and transgender offenders in GDC custody;
 - c. The TIOL will assist the facility with ensuring that all necessary services, to include twice yearly safety reassessments, are conducted in accordance with Attachment 2, PREA Sexual Victim/Sexual Aggressor Screening Tool, from SOP 208.06;
 - d. Once placed on the TIOL, no offender may be removed without approval of the SCC Committee designee;
 - e. The Classification Committee will determine, on a case-by-case basis, the most appropriate classification assignments for each transgender offender;
 - f. Transgender offenders must never be placed in dedicated units or housed only with other transgender offenders; and
 - g. The offenders' own views with respect to their safety should be given serious consideration.

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9. Transgender offenders shall be notified that if they want gender-specific hygiene or undergarment items that they must either request the standard-issued items or receive approval to order from the offender commissary.

10. The GDC PREA Unit will:

- a. Ensure that the facility has entered the correct profile on the TIOL;
- b. Check to determine whether a previous SCC referral was completed;
- c. If a previous SCC referral was not completed, the PREA Unit will arrange a private meeting with the offender in person, via video or telephone call within 10 business days of receiving the Statewide Classification Committee Referral Form; and
- d. During the private meeting, the PREA Unit designee will complete the Interview portion of the SCC Referral Form and make a recommendation to the remaining SCC Committee Members for review.

C. SCC Committee:

1. In deciding whether to assign a transgender or intersex offender to a male or female facility, GDC shall consider on a case-by-case basis whether:
 - a. Placement would ensure the offender's health and safety; and
 - b. Whether the placement would present management or security problems.
2. Transgender offenders may not be assigned to gender-specific facilities based solely on their external genital anatomy.
3. The SCC will evaluate each referral to discuss the facility type and the safe placement of each transgender offender. They will consider the following:
 - a. Classification's housing decision;

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- b. The offender's documented choice of whether a male or female facility is safest for him or her (based on the SCC Referral Form);
 - c. The offender's prior institutional history (to include incidents and grievances);
 - d. The offender's prior violent or sexual crime history;
 - e. The offender's designation on the PREA Sexual Victim/Sexual Aggressor Classification Screening;
 - f. The offender's physical appearance, age, and physical build;
 - g. Any relevant information obtained about the offender from security staff or medical and mental health staff since arrival;
 - h. The ability of security staff to house and supervise the offender to ensure his or her safety in each environment;
 - i. Any management problems, including but not limited to disciplinary reports; and
 - j. Any other relevant information about the offender's ability to positively or negatively manage him or herself in each type of environment.
4. The decision about the type of facility (male or female) made by the committee will be documented on Attachment 1, SCC Referral Form and reviewed and approved by the Facilities Division Assistant Commissioner or designee;
 5. Transgender offenders shall be given a one-page informational sheet by the SCC at the SCC meeting that:
 - a. Advises them of their rights;
 - b. The opportunity to shower separately;
 - c. That they will be assessed at their assigned facility for safe housing;

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- d. Property information;
 - e. Other safety-related information; and
 - f. This information should be available in both English and Spanish, at minimum.
6. If the offender is recommended by the SCC to be housed according to his or her sex (and not gender identity), he or she will stay at their current facility and complete the normal classification process;
 7. If the offender is recommended by the SCC to be housed according to his or her gender identity, and this is approved by the Facilities Division Assistant Commissioner or designee, he or she will be scheduled for transfer to the recommended facility;
 8. The signed approval will be forwarded to and maintained by the Agency PREA Coordinator;
 9. If the SCC recommendation is denied by the Facilities Division Assistant Commissioner or designee, for any reason, that denial shall be documented in writing, forwarded to, and maintained by the Agency PREA Coordinator;
 10. The offender will be transferred to his or her assigned permanent facility after Diagnostics according to the decision of the SCC and will be housed via the standard classification and housing selection process of the facility's Classification Committee, with consideration given to the PREA Sexual Victim/Sexual Aggressor Classification information; and
 11. The facility-based Classification Committee will also consider:
 - a. Bed;
 - b. Program;
 - c. Education, and

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d. Work assignments of the offender.

D. Confidentiality:

1. Because transgender offenders are at particularly high risk for physical or sexual abuse or harassment, information learned about an offender shall be used only for the safety and security of the offender and facility;
2. No person shall share this information with others unless there is a legitimate and documented reason to do so;
3. Sexual safety risk screening information is required to be locked and secured with limited access; and
4. Staff are expected to keep an offender's sensitive personal information confidential.

E. Bed, Program, Work, and Education Assignments:

1. Once the offender is transferred to their assigned facility, the classification information from Diagnostics, combined with the sexual safety risk screening information, will be used by the classification committee to house the offender at that facility, to include a unit and bed assignment;
2. Placing an offender in involuntary segregated housing to protect him or her from victimization is not permitted unless an assessment of all available alternatives has been made and it is determined that there is no available alternative means of separation from likely abusers;
3. This can only be done subject to the requirements in SOP 209.06 Administrative Segregation and the requirements in PREA standard 115.43;
4. In addition to the initial PREA Sexual Victim/Sexual Aggressor Classification Screening, transgender offenders' risk levels for sexual victimization and abusiveness must also be re-assessed:
 - a. Within thirty (30) days of their intake date;

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- b. After any new information is learned that bears upon their sexual safety;
and
 - c. At least twice each year of their incarceration.
5. At each point, the offenders' own views as to their safety must be given serious consideration.
 6. Transgender offenders shall be given the same treatment in determining access to programming and services as other offenders within the correctional facility;
 7. Work, education, and programming assignments can vary for transgender offenders if there is a documented reason to keep separate those offenders at high risk of being sexually victimized from those at high risk of being sexually abusive; and
 8. The facility-based Classification Committee will make individualized determinations about these offenders' assignments without discrimination.

F. Showers:

1. Transgender offenders shall be given the opportunity to shower separately from other offenders;
2. This does not mean they are required to shower separately, but that the opportunity is afforded to them if they wish to do so. Separate means the following:
 - a. Alone in a community shower at a separate time from other offenders; or
 - b. Alone in a shower with separate and private walls or curtains if in a group.

G. Personal Property:

1. Transgender offenders will be issued the same property as other offenders in their assigned facility are issued.

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2. If an offender on the TIOL requests hygiene or undergarments items that are different from those typically supplied for their assigned gender, he or she shall be instructed to make a request with the designated staff member, and he or she will be issued the approved requested items if there is no documented, articulable, and verified security concern for not approving the request.
3. The designated staff shall assist the facility with determining sizes of garments needed;
4. Staff will order and make arrangements for the garments to be shipped to the facility;
5. If the offender is transferred to another facility, the history follows him or her, and the new facility can request replacement items;
6. Approved undergarments or hygiene items will be a substitute for, not in addition to, what is provided to the general population. These items include:
7. Providing women's hygiene or undergarments to a transgender female, or the opposite for transgender males, is in accordance with SOP 206.01 Offender Personal Property.

H. Transports:

1. Whenever possible, both a male and female staff should be on a transport that includes a transgender offender so search options are available to the offender depending on the circumstance, gender identity, and PREA requirements that prohibit cross-gender pat searches.

I. Respectful Communication:

1. Transgender and intersex offenders shall be treated with the same rules and respect as other offenders.
2. All GDC employees shall be required to attend training annually on PREA, which includes how to communicate effectively and professionally with offenders, including:

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- a. Lesbian;
 - b. Gay;
 - c. Bisexual;
 - d. Transgender;
 - e. Intersex; or
 - f. Gender non-conforming offenders.
3. In-service training shall include gender-specific reference and training to staff as it relates to the specific population supervise;
 4. Staff members transferring to a facility of different gender from a prior institution shall receive gender-appropriate training;
 5. Respectful communication with transgender offenders is vital to facility safety and security;
 6. All staff are responsible for behaving professionally and responsibly around all offenders, to include transgender offenders, to maintain order and composure on their shift;
 7. To address transgender and intersex offenders respectfully, staff may not engage in unwelcomed verbal comments, gestures, or actions of a derogatory or offensive nature;
 8. Staff shall not make demeaning references to the offender's gender or gender identity, or sexually suggestive or derogatory comments about the body or clothing of an offender;
 9. Staff are encouraged, but not mandated, to use the pronoun the offender prefers;

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10. If staff chooses to not use the preferred pronoun, they may refer to transgender offenders by their legal last name;
11. Staff will not attempt to change any offender's understanding of his or her gender identity or sexual orientation; and
12. Staff shall not permit, condone, or otherwise allow any offender to sexually harass other offenders, including transgender offenders.

J. Searches:

1. Department shall train security staff members on how to conduct searches of transgender and intersex offenders in a professional and respectful manner and in the least intrusive manner possible, consistent with security needs and consistent with the population gender of their assigned institution;
2. No security staff will conduct a body cavity search;
3. No same-gender or cross-gender body cavity searches are permitted except by medical staff;
4. Staff may not search or physically examine a transgender or intersex offender for the sole purpose of determining genital status;
5. If the offender's genital status is unknown, it may be determined through conversations with the offender, by reviewing medical records or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner;
6. If a transgender offender is placed in a facility, he or she will be strip searched by the same gender staff as all other offenders;
7. Pat or frisk searches in male facilities may be conducted by either male or female staff;
8. Pat or frisk searches in female facilities may only be conducted by female staff absent exigent circumstances;

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9. Staff must search offenders' property in their cell or dorm area respectfully and professionally and may not discard or damage opposite gender hygiene items or undergarments that have been approved.

K. Physical and Mental Health Treatment:

1. All offenders, to include those who self-identify or screen on the PREA Sexual Victim/Sexual Aggressor Classification Screening form as transgender, will be referred to medical for a review of needs within five (5) days of arrival at Diagnostics and within five (5) days of arrival at their assigned facility;
2. Medical or mental health practitioners will document whether an offender has identified as transgender after an evaluation using the Mental Health Reception Screen;
3. Classification will update the TIOL list in SCRIBE to ensure the facility PREA compliance manager and agency PREA coordinator are aware and can ensure all necessary services are provided to them;
4. GDC will provide transgender offenders with individualized assessments and care, to include:
 - a. Necessary and appropriate mental health services; and
 - b. When warranted, hormone treatment throughout their incarceration;
5. GDC will ensure that all gender-related hormone treatment that may be provided while the offender is in custody occurs after an individualized assessment of the offender by a medical practitioner;
6. GDC medical practitioners will monitor each offender's care and treatment and adjust hormone levels and dosages as medically warranted;
7. Only medical practitioners will make decisions regarding gender-related hormone treatment needs; and

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8. GDC's Statewide Medical Director will make the final determination on whether gender-related hormone treatment for a transgender offender should be initiated or continued based on documented medical need.

L. Staff and Offender Discipline:

1. Staff or offenders who are found to have participated in the abuse or harassment of a transgender offender shall be subject to the rules of the offender disciplinary handbook and staff disciplinary guidelines;
2. GDC does not tolerate physical, emotional, or sexual abuse or harassment of any offender;
3. An offender who abuses another offender, or one who coerces such an offender into involuntary sexual activity, will be disciplined and referred for criminal prosecution if warranted;
4. Offenders who engage in consensual sexual contact with another offender, attempt to engage in or solicit such contact, or help another engage in sexual contact with an offender will be disciplined with each occurrence;
5. Offenders shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following a substantiated finding;
6. These sanctions shall be imposed in accordance with SOP 209.01, Offender Discipline;
7. Staff members who are alleged to have engaged in the abuse of an offender will be investigated by the Office of Professional Standards (OPS) and if substantiated, will be subject to disciplinary action, up to and including termination;
8. Additionally, staff members who engage in sexual abuse of an offender will be subject to criminal prosecution;
9. Pursuant to O.C.G.A. § 16-6-5.1, it is a felony for correctional staff to have sexual contact with an offender;

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10. These rules apply regardless of the consent of the offender;
11. GDC shall ensure that all volunteers and contractors who have contact with offenders have been trained on this prohibition against abuse and harassment;
12. Any contractor or volunteer who engages in abuse or harassment shall be prohibited from contact with offenders and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies; and
13. The facility shall take appropriate remedial measures and shall consider whether to prohibit further contact with offenders, in the case of any other violation of GDC policies by a contractor or volunteer.

M. Tracking and Quality Improvement:

1. To ensure compliance with this policy and to help ensure compliance with PREA audit requirements, GDC will ensure that the Transgender and Intersex Offender List is managed through the SCRIBE module;
2. The goal is to ensure reliable and accurate tracking of the following:
 - a. The number of transgender and intersex offenders;
 - b. Their intake date at both Diagnostics and their permanently assigned facility;
 - c. Their facility locations, bed assignment, and unit assignment;
 - d. Bed, unit, and facility change history and documented reasons for changes;
 - e. Restrictions, if any, in programming or work assignments;
 - f. Whether they are on the mental health caseload;
 - g. Whether they are receiving hormone treatment from medical;

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- h. Their twice-yearly required reassessment date and any other reassessment dates, to include subsequent changes because of the reassessment;
 - i. Incident history;
 - j. Grievance history; and
 - k. Property (undergarment and hygiene) requests and provisions.
3. The SCC shall have access to the information to assist with decision-making at subsequent gender committee meetings.

V. Attachments:

Attachment 1: SCC Referral Form
Attachment 2: Transgender Brochure

VI. Record Retention of Forms Relevant to this Policy:

Upon completion, Attachment 1 shall become a permanent part of the offenders institutional file. The brochure shall be utilized according to the SOP until revised or obsolete.

Statewide Classification Committee (SCC) Referral Form

FACILITY CLASSIFICATION COMMITTEE:

Offender Name: _____ **GDC#** _____ **Date of Birth:** _____

Height _____ **Weight:** _____

Intersex: Yes No **If, yes what gender does the offender identify as?** Male Female

Gender: **Transgender Female:** Biologically male; identifies as female
 Transgender Male: Biologically female; identifies as male

What pronoun does the offender prefer to be called? **Female Pronouns** **Male Pronouns**

What facility-type does the offender prefer? (Explain) **Female Facility** **Male Facility** _____

Medical Profiles: _____

Does the offender receive hormone treatments? Yes No

PREA Risk Screening Result: Victim Aggressor BOTH, Victim AND Aggressor

Has the offender ever been convicted of a sex offense? Yes (explain) No _____

Does the offender have a disciplinary history of a sexual nature? Yes (explain) No _____

Has the offender ever been convicted of a violent offense? YES (explain) No _____

Does the offender have a disciplinary history of assaultive behavior? Yes (explain) No _____

Would you recommend this offender to be placed/remain in the offender's preferred facility type? (Explain) Yes No

Classification Chairperson (Print Name)

Chairperson's Signature

Date

Warden's Recommendation/Comments: _____

Warden's Signature

Date

SCC HOUSING RECOMMENDATIONS:

PREA Coordinator: Remain in Current Facility Type Transfer to facility based on gender identity

Justification: _____

PREA Designee Signature

Date

Medical Director: Remain in Current Facility Type Transfer to facility based on gender identity

Justification: _____

Medical Designee Signature

Date

Mental Health Director: Remain in Current Facility Type Transfer to facility based on gender identity

Justification: _____

Mental Health Designee Signature

Date

Facilities Director: Remain in Current Facility Type Transfer to facility based on gender identity

Justification: _____

Facilities Designee Signature

Date

Assistant Commissioner: Remain in Current Facility Type Transfer to facility based on gender identity

Justification: _____

Assistant Commissioner, Facilities Signature

Date

Things to Know About During Your Stay:

- Placement and programming assignments for each transgender or intersex offender will be reassessed at least twice each year to review any threats to safety experienced by you. Around every six months, someone from the facility will meet with you to discuss any safety concerns prior to the facility completing a review of where you are housed and how you are programmed.
- A transgender or intersex offender's own views with respect to his or her own safety will be given serious consideration. This does not mean you will decide where you are housed, but it does mean we listen to you and what your concerns are and take them seriously.
- Transgender and intersex offenders will be given the opportunity to shower separately from other offenders. The PREA compliance manager at your facility will inform you how this process will work for you.
- Our staff are trained on how to conduct searches of transgender and intersex offenders in a professional and respectful manner. Like all offenders, you must cooperate with searches.
- A state-wide committee that includes staff from medical, mental health and security will meet and discuss your facility placement decision. Your opinion about your own safe placement will be considered. There are many factors that are considered when deciding where to house each offender.
- Your bed, unit, programming, education and detail assignments will be reviewed at your facility by the classification committee. They are committed to your dignity and safety.
- You may request undergarments and hygiene items that are consistent with your gender identity. If approved, these will be issued to you after you arrive at your permanent facility.

**PREA STANDARDS and INFORMATION
RELATED to
TRANSGENDER/INTERSEX
OFFENDERS**

- Never put your safety in the hands of another offender. If you believe you are in danger, contact security staff and/or the facility PREA compliance manager immediately.

- Do not accept gifts from others. Gifts and favors usually have strings attached;

- All GDC staff are mandatory reporters of sexual abuse and harassment as well as for any imminent danger of abuse. Tell a staff if you are fearful of abuse or are being abused or harassed so they can help you;

- Be selective in your choice of friends or associates;

- Do not gamble, seek or use contraband items, or engage in many prohibited activities;

- Communicate respectfully with all offenders and all staff; and

- If you are feeling depressed or feel as if you may harm yourself, tell any staff and seek help from mental health. Harming yourself will not solve your problems. We are all here to help you.

If you feel you cannot tell a staff member about sexual abuse or sexual harassment, you may write to the GDC statewide PREA coordinator. The PREA coordinator's address is:

**GDC PREA Coordinator
300 Patrol Road
Forsyth, GA 31029**

Policy and Safety:

It is the policy of the GDC to provide safe, secure, and humane housing and treatment to all offenders, to include transgender and intersex offenders. During intake, all offenders are asked about LGBTI (Lesbian, Gay, Bi-Sexual, Transgender, Intersex) identity. Your gender and gender identity are important for us to know so we can best determine your housing and programming needs.

While you are incarcerated, no one has the right to pressure you to engage in sexual acts. Rape and sexual assault are violent and illegal acts. Regardless of your age, race, size, ethnicity, gender identity, or sexual orientation, you have the right and opportunity to serve your sentence with dignity. You do not have to tolerate sexual or physical pressure, harassment, manipulation, or assault and we do not tolerate it at the GDC.

Many of the GDC's policies on zero tolerance toward sexual abuse and sexual harassment come from the Prison Rape Elimination Act (PREA) of 2003, 28 C.F.R. Part 115. You can read more about PREA in the law library. The GDC follows the PREA standards.

Definitions:

Transgender - A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

Intersex - A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

Tips and Awareness:

Be aware of your surroundings at all times.

ATTACHMENT 2

Standard Operating Procedures

Policy Name: Prison Rape Elimination Act (PREA) Sexually Abusive Behavior Prevention And Intervention Program

Policy Number: 208.06

Effective Date: 3/2/2018

Page Number: 1 of 33

Authority:
Commissioner

Originating Division:
Executive Division (Office of Professional Standards)

Access Listing:
Level II: Required Offender Access

I. Introduction and Summary:

A. The Georgia Department of Corrections (GDC) has a zero-tolerance policy toward all forms of sexual abuse, Sexual Harassment and sexual activity among offenders. The purpose of this policy is to strengthen the Department's efforts to prevent occurrences of this nature by implementing key provisions from the U.S. Department of Justice's standards on the prevention, detection, and response to sexual abuse in confinement facilities, in accordance with the Prison Rape Elimination Act of 2003 (PREA). This policy and provides guidelines to address the following prohibited sexually abusive and/or harassing behavior(s):

1. Offender Perpetrator Against Offender Victim; and
2. Staff perpetrator against offender victim.

B. These guidelines are provided to assist staff in:

1. **Detecting** incidents and identifying perpetrators and victims of sexual abuse and/or harassment;
2. **Preventing** sexually abusive and/or harassing behavior;
3. **Protecting** vulnerable offenders from abuse and harassment from sexually aggressive offenders;
4. Educating staff on how to **intervene** properly and in a timely manner;
5. **Documenting, reporting, and investigating** reported incidents; and
6. **Disciplining** and/or **prosecuting** perpetrators.

II. Authority:

A. O.C.G.A.: § 16-6-5.1;

B. Prison Rape Elimination Act National Standards: **28 CFR Part 115, et seq.;**

C. GDC Standard Operating Procedures (SOPs): 203.03 Incident Report, 209.01

Standard Operating Procedures

Policy Name: Prison Rape Elimination Act (PREA) Sexually Abusive Behavior Prevention And Intervention Program

Policy Number: 208.06

Effective Date: 3/2/2018

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Authority:
Commissioner

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Executive Division (Office of
Professional Standards)

Access Listing:
Level II: Required Offender
Access

Offender Discipline, 227.02 Statewide Grievance Procedure, 209.06 Administrative Segregation, 103.10 Evidence Handling and Crime Scene Preservation, 103.06 Investigation of allegations of sexual contact, Sexual Abuse, and Sexual Harassment of Offenders, 508.22 Mental Health Management of Suspected Sexual Abuse, Contact or Harassment, 508.18) MH/MR Discipline Procedures 508.19 Receiving Screening, 507.04.19 Health Assessment and Medical Diagnostics, 507.04.21 Health Screening Offender Transfers, 507.04.69 Women's Health Services, 507.02.02 Confidentiality of Health Record and Release of Information, 507.04.84 Medical Management of Suspected Sexual Abuse, 507.04.85 Informed Consent, 507.04.91 Medical Management of Suspected Sexual Assault, Abuse, Harassment, 101.04 Records Management, and 104.09 Filling A Vacancy; and

D. ACA Standards: 2-CO-3C-01, 2-CO-4B-06, 4-4177, 4-4281-1, 4-4281-2, 4-4281-3, 4-4281-4, 4-4281-5, 4-4281-6, 4-4281-7, 4-4281-8, 4-4282, 4-4291-3, 4-4307, 4-4311, 4-4312-1, 4-4403, and 4-4406.

III. Definitions:

- A. Community Confinement Facility** - A state operated facility, other than a State Prison, in which individuals reside as part of a term of imprisonment while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours. (e.g. Transitional Centers.)
- B. Direct Staff Supervision** - Security staff in the same room with, and within reasonable hearing distance of, the residents or offenders and disallows youthful offenders and adult offender communication of any kind.
- C. Exigent Circumstance** - Any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.
- D. Gender Nonconforming** - A person whose appearance or manner does not conform to traditional societal gender expectations.
- E. Intersex** - A person who's sexual or reproductive anatomy or chromosomal

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- pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.
- F. **Juvenile** - Any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.
- G. **PREA Compliance Manager (PCM)** - An upper-level manager, designated by the Warden, and is responsible for compliance in all facility PREA-related operations.
- H. **Retaliation Monitor** - A staff member, designated by the Warden, who is responsible for the prevention, detection, and reporting of any retaliatory actions taken against staff or offenders that report PREA allegations.
- I. **Sexual Abuse Incident Review Team (SAIRT)** – A team that consists of upper-level management representatives. SAIRT members may be part of the SAIRT, however the SAIRT shall not be solely comprised of SAIRT members. Line supervisors and other staff members may be designated as SAIRT members at the discretion of the Warden/Superintendent of the facility.
- J. **Sexual Abuse/Harassment Response Team (SART)** – A team that consists of a locally composed multi-disciplinary team, with both security and non-security staff, who work together to fulfill the guidelines defined in section I of this policy. This team includes but is not limited to:
1. SART Investigator;
 2. SART Medical;
 3. SART Mental Health;
 4. Facility/ Internal Victim Advocate; and
 5. Retaliation Monitor.
- K. **Sexual Abuse by Offender** - Sexual abuse of an offender, detainee, or resident by another offender, detainee, or resident includes any of the following acts if the

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victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus;
3. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
4. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

L. Sexual Abuse by A Staff Member, Contractor, Or Volunteer - Sexual abuse of an offender, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the offender, detainee, or resident:

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus;
3. Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
4. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
5. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer

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has the intent to abuse, arouse, or gratify sexual desire;

6. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1) through (5) of this definition;
7. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an offender, detainee, or resident;
8. Voyeurism by a staff member, contractor, or volunteer. Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an offender, detainee, or resident by staff for reasons unrelated to official duties.

M. Sexual Harassment includes:

1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender, detainee, or resident directed toward another; and
2. Repeated verbal comments or gestures of a sexual nature to an offender, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

N. Special Agent in Charge (SAC) - An investigator who works for the Office of Professional Standards (OPS) who is responsible for any criminal investigation into a PREA allegation, should such investigation be deemed appropriate.

O. Substantiated Allegation - An allegation that was investigated and determined to have occurred.

P. Transgender - A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

Q. Unfounded Allegation - An allegation that was investigated and determined not to have occurred.

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- R. **Unsubstantiated Allegation** - An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
- S. **Youthful Offender** - Any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

IV. Statement of Policy and Applicable Procedures:

The Department hereby adopts, implements, and follows the standards outlined in the Prison Rape Elimination Act (PREA) Standards found at 28 CFR Part 115. Through the adoption of the PREA Standards, the Department seeks to eliminate sexual abuse and Sexual Harassment of offenders in custody. The Department tolerates no form of sexual abuse or Sexual Harassment of any offender.

Offenders who sexually abuse another offender will be disciplined and referred for criminal prosecution. Offenders who engage in Sexual Harassment, consensual sexual contact with another offender, attempt to engage in or solicit such contact, or help another engage in sexual contact with an offender will be disciplined.

Staff members who engage in sexual abuse or Sexual Harassment of an offender will be subject to disciplinary action, up to and including termination and banishment from all Georgia correctional institutions, whichever action is applicable. Additionally, staff members who engage in sexual abuse of an offender will be subject to criminal prosecution. Pursuant to O.C.G.A. § 16-6-5.1, it is a felony for correctional staff to have sexual contact with an offender.

A. Prevention Planning:

1. The Department shall employ or designate an upper-level, Department PREA Coordinator with sufficient time and authority to develop, implement, and oversee Department efforts to comply with the PREA standards in all facilities.

The Warden/Superintendent at each institution must ensure that all aspects of this policy are implemented. Each facility shall have an assigned PREA Compliance Manager, who has sufficient time and authority to coordinate the

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facility's efforts to comply with PREA standards.

The Warden/Superintendent shall maintain a current written PREA Local Procedure Directive and Coordinated Response Plan (see Attachment 7 for template) to provide instruction for responses to sexual allegations. This Local Procedure Directive shall reflect that institution's unique characteristics and specify how that institution will respond to sexual allegations and the notification procedures to be followed for reports of sexual allegations. At a minimum it will include:

- a. Specification of staff member(s) responsibilities from the first report of an allegation through the conclusion of an investigation.
 - b. Responding to the victim and ensuring evidence retention.
 - c. Monitoring the offender perpetrator to ensure safety of others and evidence retention.
 - d. Ensuring safe housing, medical and mental health care, forensic exam, victim services for the victim, and commencing an investigation.
2. The Department shall ensure that contracts for the confinement of its offenders with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards and that any new contract or contract renewal shall provide for Department contract monitoring to ensure that the contractor is complying with the PREA standards.
 3. The Warden/Superintendent at each facility shall develop a written Staffing Plan in accordance with this SOP using Attachment 11, Staffing Plan Template. To enhance the supervision and monitoring of offenders, each facility shall document and make its best efforts to comply on a regular basis with the established staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect offenders against sexual abuse. In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations on the daily Post Roster. Facility management staff will review these deviations on a regular basis, no

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less than annually, to identify the most common reasons for deviations. This information shall be used to make adjustments, as necessary, to the facility staffing plan. Completed plans will be forwarded to the PREA Coordinator for review and approval.

4. No less than annually, each facility shall assess, determine, and document whether adjustments are needed to the established staffing plan. Revised plans shall be forwarded to the PREA Coordinator for review and approval.
5. All new or existing facility designs, modifications, and technology upgrades will include consideration of how they could enhance the Department's ability to protect offenders against sexual abuse.
6. Unannounced rounds by supervisory staff, with the intent of identifying and deterring sexual abuse and Sexual Harassment, are required to be conducted every week, including all shifts and all areas. These rounds will be documented in the area log books. In addition, the institutional Duty Officer is required to conduct and document unannounced rounds at least once per week in **all** areas. These rounds will be documented in the local Duty Officer Log book.
7. Youthful Offenders:
 - a. A Youthful Offender shall not be placed in a housing unit in which the Youthful Offender will have sight, sound, or physical contact with any adult offender through use of a shared dayroom or other common space, shower area, or sleeping quarters.
 - b. In areas outside of housing units, staff must either:
 - i. Maintain sight and sound separation between Youthful Offenders and adult offenders, or
 - ii. Provide direct staff member supervision when Youthful Offenders and adult offenders have sight, sound, or physical contact.
 - c. Efforts shall be made by the assigned institution to avoid placing

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Youthful Offenders in isolation to comply with this provision. Absent Exigent Circumstances, Youthful Offenders shall not be denied daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful Offenders shall also have access to other programs and work opportunities to the extent possible.

8. Limits to Cross-Gender Viewing and Searches:

- a. The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in Exigent Circumstances or when performed by medical practitioners.
- b. The facility shall not conduct cross-gender pat searches of female offenders, absent Exigent Circumstances. This requirement shall not restrict female offender's access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.
- c. The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female offenders via an incident report.
- d. The facility shall implement procedures that enable offenders to shower, perform bodily functions, and change clothing without nonmedical staff members of the opposite gender viewing their breasts, buttocks, or genitalia, except in Exigent Circumstances or when such viewing is incidental to routine cell checks. Offenders should only shower, perform bodily functions, and change clothing in designated areas (e.g. cells, shower rooms, and bathrooms).
- e. Staff members of the opposite gender shall announce their presence when entering an offender housing unit; this includes the officer assigned to the housing unit. It is understood that staff members might not make announcements when responding to circumstances that require immediate action in order to combat a threat to security.

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Offenders will be notified of the presence of opposite-gender staff members in several ways:

- i. Offenders are advised of the requirement to remain clothed, and the presence of cross-gender staff members generally, during the intake screening process and the admission and orientation process;
- ii. The following notice will be posted **“NOTICE TO OFFENDERS: Male and female staff members routinely work in and visit housing areas.”**
- iii. For staff members with offices in the housing units, the most recent schedule is posted in the unit so offenders are aware of when opposite-gender staff may be present;
- iv. An announcement shall be made each time an opposite-gender staff member comes into a housing unit area and;
- v. Nothing in this section should preclude opposite-gender staff members from viewing live or recorded video, or participating in an offender suicide watch.
- f. The facility shall not search or physically examine a Transgender or Intersex offender for the sole purpose of determining the offender’s genital status. If the offender’s genital status is unknown, it may be determined during conversations with the offender, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner. The provision does not limit searches of offenders to ensure the safe and orderly running of the institution.
- g. The Department shall train security staff members on how to conduct cross-gender pat searches and searches of Transgender and Intersex offenders in a professional and respectful manner and in the least intrusive manner possible, consistent with security needs and consistent with the population gender of their assigned institution.

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9. Offenders with Disabilities, Who Are Limited English Proficient (LEP), or Have Limited Reading Skills:

- a. The local PREA Compliance Manager shall ensure the appropriate resources are available to offenders with disabilities and those who are LEP so they may understand the facility policies around reporting, preventing, detecting, and responding to sexual abuse and Sexual Harassment.
- b. The facility shall not rely on offender interpreters, offender readers, or other types of offender assistants except in Exigent Circumstances where an extended delay in obtaining an effective interpreter could compromise the offender's safety, the performance of first response duties under 28 CFR § 115.64, or the investigation of the offender's allegations.

10. Hiring and Promotion Decisions:

- a. Employees:
 - i. The Department shall not hire or promote anyone who may have contact with offenders, who:
 - 1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, Juvenile facility, or other institution (as defined in 42 U.S.C. 1997); has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 - 2) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph a.i.1., of this section.
 - ii. The Department shall consider any incidents of Sexual Harassment in determining whether to hire or promote anyone who may have contact with offenders.

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- iii. Before hiring new employees who may have contact with offenders, the Department shall:
 - 1) Ask all applicants and employees who may have contact with offenders directly about previous misconduct described in SOP 104.09, Filling a Vacancy, in written applications or interviews for hiring and promotions and any written interview or written self-evaluations conducted as part of reviews of current employees. Every employee has a continuing affirmative duty to disclose any such misconduct.
 - 2) Perform a Criminal History Record checks on all employees and volunteers prior to start date and again within at least every five years. A tracking system shall be implemented at each local facility to ensure the criminal history checks are conducted within the appropriate time frames, according to policy, for each person with access to that facility.
 - iv. Unless prohibited by law, the Department shall provide information on Substantiated Allegations of sexual abuse or Sexual Harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work. The Department complies with the Federal Privacy Act and Freedom of Information Act, and all other applicable laws, rules, and regulations.
 - v. Material omissions regarding misconduct or the provision of materially false information shall be grounds for termination.
- b. Contractors:
- i. The Department shall not enlist the services of any contractor, who may have contact with offenders, who:
 - 1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, Juvenile facility, or other institution (as defined in 42 U.S.C. 1997); Has been convicted of engaging or

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attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

- 2) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph b.i.1., of this section.
 - ii. The Department shall consider any incidents of Sexual Harassment in determining whether to enlist the services of any contractor, who may have contact with offenders.
 - iii. Before hiring new employees who may have contact with offenders, the Department shall:
 - 1) Perform a Criminal History Record check before enlisting the services of any contractor who may have contact with offenders and at least every five years thereafter.
 - iv. Unless prohibited by law, the Department shall provide information on Substantiated Allegations of sexual abuse or Sexual Harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work. The Department complies with the Federal Privacy Act and Freedom of Information Act, and all other applicable laws, rules, and regulations.
 - v. Material omissions regarding misconduct or the provision of materially false information shall be grounds for termination.

B. Responsive Planning:

1. Evidence protocol and forensic medical examinations.
 - a. Each facility shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. Reference SOP 103.10, Evidence

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Handling and Crime Scene Processing and SOP 103.06, Investigations of Allegations of Sexual Contact, Sexual Abuse, Sexual Harassment of Offenders.

- b. The Department's response to sexual assault follows the guidelines in the U.S. Department of Justice's Office on Violence Against Women publication, "*A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,*" dated April 2013, or the most current version.
- c. When there is a report of an incident of sexual abuse that was alleged to have occurred within the previous 72 hours, or there is a strong suspicion that an assault may have been sexual in nature, a physical examination of the alleged victim shall be conducted to determine if immediate medical attention is necessary and if the SANE protocol should be initiated, (Attachment 5, Procedure for SANE Evaluation/Forensic Collection). The SANE examination shall be provided at no cost to the offender. Physical evidence from the suspected perpetrator(s) will be collected and may also include an examination. Offender consent must be obtained prior to initiating the SANE protocol, in accordance with 507.04.85 Informed Consent.
- d. The Department stands *in loco parentis* for Youthful Offenders in its custody and can authorize a physical examination of such Youthful Offender without consulting his or her parent(s) so long as the Youthful Offender consents to the examination. For those offenders that are unable to consent or are incapacitated, the Department may authorize the collection of forensic evidence based on the Department's standing in loco parentis or as a guardian of the offender, whichever may be applicable. Physical evidence collection may also include an examination of and collection of physical evidence from the suspected perpetrator(s). Offender consent must be obtained prior to initiating the SANE protocol, in accordance with 507.04.85 Informed Consent.

NOTE: All PREA information is confidential in nature and shall only be released on a need-to-know basis. Staff members who fail to comply with the reporting provisions of this policy may be banned from correctional

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facilities, or will be subject to disciplinary action, up to and including termination, whichever is applicable.

- e. The Institution PREA Compliance Manager, under the direction of the Warden/Superintendent, shall attempt to enter into agreement, or Memorandum of Understanding (MOU), with a rape crisis center to make available a victim advocate to offenders alleging sexual abuse/Sexual Harassment upon request. If the facility cannot do so, efforts must be documented and local staff shall be identified and specially trained to provide this service. Documentation of training must be maintained by the employee's manager and made available to the local PREA Compliance Manager upon request.

Note: Any agreement must be approved through the Legal Office prior to implementation.

- f. Victim advocates from the community used by the facility shall be pre-approved through the appropriate screening process and subject to the same requirements as contractors and volunteers who have contact with offenders. The victim advocate serves as emotional and general support, navigating the offender through the treatment, evidence collection, and investigation process. The victim advocate has access to the offender similar to that of medical staff at the facility. Victim Advocates are not authorized to make decisions regarding offender care, or interfere with escort, security, or investigation procedures that are deemed necessary by the facility/investigator.
- g. If an external agency is responsible for investigating the allegations of sexual abuse the Department shall request that the investigating agency follow the requirements of (a) through (e) of this section.
- h. An administrative and/or criminal investigation shall be completed for all allegations of sexual abuse and Sexual Harassment. Allegations that involve potentially criminal behavior will be referred for investigation to OPS. This referral does not alleviate the facility from its responsibility of reaching a disposition on the administrative SART investigation.

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- i. In the event the investigation is referred to an outside entity that entity shall have in place a policy governing the conduct of such investigations.

C. Training and Education: Participation in training must be documented through employee signature or electronic verification. Participation documentation will note that employees understood the training they have received by signing Attachment 1, Sexual Abuse/Sexual Harassment Prison Rape Elimination Act (PREA) Education Acknowledgement Statement. This form shall be retained in the employee's local personnel file. At the conclusion of the training, employees are asked to seek additional supervisory direction, if necessary, to ensure understanding of the training.

1. Employee Training:

- a. All Departmental employees shall be required to attend training annually on:
 - i. The Department's zero-tolerance policy for Sexual Abuse and Sexual Harassment;
 - ii. How to fulfill their responsibilities under the Department's Sexual Abuse and Sexual Harassment prevention, detection, reporting, and response policies and procedures;
 - iii. Offenders' right to be free from Sexual Abuse and Sexual Harassment;
 - iv. The right of offenders and employees to be free from retaliation for reporting Sexual Abuse and Sexual Harassment;
 - v. The dynamics of Sexual Abuse and Sexual Harassment in confinement;
 - vi. The common reactions of Sexual Abuse and Sexual Harassment victims;

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- vii. How to detect and respond to signs of threatened and actual Sexual Abuse;
 - viii. How to avoid inappropriate relationships with offenders;
 - ix. How to communicate effectively and professionally with offenders, including lesbian, gay, bisexual, Transgender, Intersex, or Gender Nonconforming offenders; and
 - x. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
- b. In-service training shall include gender specific reference and training to staff as it relates to the specific population supervised. Staff members transferring into a facility of different gender from prior institution shall receive gender-appropriate training.
 - c. New employees shall receive PREA training during Pre-Service Orientation.
 - d. Specialized training shall be required for members of the Sexual Abuse Response Team (SART) and any other staff members who are likely to be involved in the management and treatment of sexually abused victims and the perpetrators.
2. Volunteer and Contractor Training:
- a. The Department shall ensure that all volunteers and contractors who have contact with offenders are provided with a copy of this policy and have been trained on their responsibilities under the Department's PREA policies and procedures.
 - b. The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with offenders, but all volunteers and contractors who have contact with offenders shall be notified of the Department's zero-tolerance policy

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regarding sexual abuse and Sexual Harassment and informed on how to report such incidents.

- c. Participation must be documented through volunteer and contractor signature or electronic verification, and will indicate that the volunteer and contractor understood the training they have received by signing Attachment 1, Sexual Abuse/Sexual Harassment Prison Rape Elimination Act (PREA) Education Acknowledgement Statement. At the conclusion of the training, volunteers and contractors are asked to seek additional direction from Department staff members, if necessary, to ensure understanding of the training.
3. Offender Education: Notification of the GDC's zero-tolerance policy for sexual abuse and harassment and information on how to report an allegation at the receiving facility shall be provided to every offender upon arrival to the facility. In addition to verbal notification, offenders will be provided a GDC PREA pamphlet. Within 15 days of arrival, formal PREA education will be conducted by assigned staff members to all offenders which will include a gender appropriate video on sexual abuse. Both the initial notification and the formal education will be documented in writing by signature of offender and placed in the offender's institutional file.

In the case of Exigent Circumstances, such training may be delayed, but no more than 30 days. If the Exigent Circumstance extends beyond 30 days, justification and documentation must be placed in the offender's institutional file. Once the Exigent Circumstance no longer applies, such training must be provided immediately. This education is documented in the same manner as for offenders who participated during the regularly scheduled orientation.

- a. The PREA education will be provided by designated staff members and the presentation must include:
 - i. The Department's zero tolerance of sexual abuse and Sexual Harassment;
 - ii. Definitions of sexually abusive behavior and Sexual Harassment;

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- iii. Prevention strategies the offender can take to minimize his/her risk of sexual victimization while in Department custody;
 - iv. Methods of reporting an incident of sexual abuse/Sexual Harassment against oneself, and for reporting allegations of sexual abuse involving other offenders;
 - v. Treatment options and programs available to offender victims of sexual abuse and Sexual Harassment;
 - vi. How an investigation begins and the general steps to an investigation;
 - vii. Monitoring, discipline, and prosecution of sexual perpetrators;
 - viii. The prohibition against retaliation for reporting, and;
 - ix. Notice that male and female staff routinely work and visit housing areas;
- b. The facility shall maintain documentation of offender participation in these education sessions in the offender's institutional file.
 - c. A poster reflecting the Department's zero tolerance for sexual abuse and Sexual Harassment, contact information and methods of offender reporting shall be posted in each housing unit and common area throughout the facility.

4. Specialized Training (Investigations):

- a. All staff investigating sexual abuse/Sexual Harassment allegations must be specially trained in conducting sexual abuse/Sexual Harassment investigations in confinement settings.
- b. Specialized training shall include techniques for interviewing sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence

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required to substantiate a case for administrative action or prosecution referral.

- c. The Department shall maintain documentation that agents and investigators, whether internal or external, have completed the required specialized training in conducting sexual abuse investigations.
5. **Specialized Training (Medical and Mental Health Care):** GDC medical and mental health staff members and Georgia Correctional HealthCare (GCHC) staff members who have contact with offenders will be trained using the National Institute of Corrections (NIC) Specialized Training PREA Medical and MH Standards curriculum. Certificate of completion will be printed and maintained in the employee training file. In addition to the specialized training, these same employees are required to attend GDC's annual PREA in-service training.

D. Screening for Risk of Sexual Victimization and Sexual Abusiveness:

1. All offenders shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other offenders or sexually abusive toward other offenders.
2. Counseling staff members will conduct a screening for risk of victimization and abusiveness, in SCRIBE, through use of Attachment 2, PREA Sexual Victim/Sexual Aggressor Classification Screening Instrument. This screening will be conducted within 24 hours of arrival at the facility. Information from this assessment will be used to determine classification decisions with the goal of keeping separate those offenders at high risk of being sexually victimized from those at high risk of being sexually abusive. NOTE: The risk assessment should not hinder classification opportunities.
3. Offenders should be encouraged to disclose as much information as possible for the Department to provide the most protection possible under this policy. If an offender chooses not to respond to questions relating to his or her level of risk, he or she may not be disciplined.

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4. Offenders whose risk screening indicates a risk for victimization or abusiveness shall be reassessed whenever warranted due to an incident, disclosure or allegation of sexual abuse or harassment and also for all offenders, within 30 days of arrival at the institution. A case note shall be entered in SCRIBE to indicate this review has been conducted. This case note is for the sole purpose of documenting the screening occurred and shall not include any confidential or clinical information.

NOTE: Any information related to sexual victimization or abusiveness, including the information entered into the comment section of the Intake Screening Form, is limited to a need-to-know basis for staff, only for the purpose of treatment, security, management, and classification decisions.

5. The Warden/Superintendent shall designate a safe dorm(s) or safe beds for those offenders identified as highly vulnerable to sexual abuse. Location(s) shall be identified in Attachment 7, PREA Local Procedure Directive and Coordinated Response Plan and in the Staffing Plan.
6. In deciding whether to assign a Transgender or Intersex offender to a male or female facility and in making other housing and programming assignments, the Department shall consider on a case-by-case basis whether a placement would ensure the offender's health and safety, and whether the placement would present management or security problems.
7. Placement and programming assignments for each Transgender or Intersex offender shall be reassessed no less than every six months to review any threats to sexual safety of the offender.
8. Offenders whose screenings indicate they have experienced prior sexual victimization or have a history of sexually assaultive behavior must be offered a follow-up meeting with medical and mental health counseling within 14 days of the screening.
9. Offenders at high risk for sexual victimization or aggression shall not be placed in involuntary segregation based solely on that determination unless a determination has been made that there is no available alternative means of separation from likely abusers. This placement, including the concern for the

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offender's safety must be noted in SCRIBE case notes with documentation of why no alternative means of separation can be arranged.

- a. Offenders placed in segregation will receive services in accordance with SOP 209.06, Administrative Segregation.
- b. The facility shall assign such offenders to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.
- c. If offenders placed in segregated housing for this purpose have restricted access to programs, privileges, education, or work opportunities, then the facility shall document: 1) the opportunities that have been limited; 2) the duration of the limitation; and 3) the reasons for such limitations.
- d. Every 30 days, the facility shall afford each such offender a review to determine whether there is a continuing need for separation from the general population.

E. Reporting:

1. Offender Reporting:

- a. Offenders may make a report of sexual abuse, Sexual Harassment, or retaliation by any of the following methods: in writing, or verbally, through internal or external methods available. Offenders shall be encouraged to report allegations immediately and directly to a staff member. All reports will be promptly documented and investigated. Offenders may choose to report these allegations anonymously.
- b. The Department may choose to maintain a sexual abuse hotline, currently known as the "PREA" hotline. Hotline calls will not require the use of the offender's PIN number. Should a sexual abuse hotline be maintained, monitoring of this line will be the responsibility of the OPS, with immediate oversight by the Department's PREA Coordinator, or designee.

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2. Third Party Reporting:

- a. Third party reports may be made to:
 - i. The Ombudsman's Office at P.O. Box 1329 Forsyth, Ga 21029 478-992-5358
 - ii. By email to the PREA Coordinator at: PREA.report@gdc.ga.gov; and
 - iii. State Board of Pardons and Paroles, Office of Victim Services, 2 Martin Luther King, Jr. Drive, S.E., Balcony Level, East Tower, Atlanta, Georgia 30334.
 - b. Staff members shall accept reports made verbally, in writing, and from third parties and shall promptly document any verbal reports.
 - c. Staff members shall forward all reports or suspicions of sexual abuse or Sexual Harassment to their immediate supervisor or the designated SART member promptly.
- 3. Offender Grievances:** Allegations of Sexual abuse and Sexual Harassment are not grievable issues. They should be reported in accordance with methods outlined in this policy.

F. Official Response Following an Offender Report:

1. Staff, First Responder, and Department reporting duties:
 - a. Response protocols shall follow the guidelines outlined in Attachment 7, Local Procedure Directive and Coordinated Response Plan.
 - b. The PREA Unit will be notified, via PREA.report@gdc.ga.gov, of all allegations via Attachment 10, PREA Initial Notification Form.
2. Reporting to Other Confinement Facilities:

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- a. In cases where there is an allegation that sexual abuse occurred at another Department facility, the Warden/Superintendent (or his/her designee) of the victim's current facility will provide notification to the Warden/Superintendent of the institution where the allegation allegedly occurred and the Department's PREA Coordinator. In cases alleging sexual abuse by staff at another institution, the Warden/Superintendent of the offender's current facility refers the matter directly to the Regional SAC and the Department's PREA Coordinator. For non-Department facilities, the Warden/Superintendent will notify the appropriate office of the facility where the abuse allegedly occurred and the Department's PREA Coordinator.
 - b. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
 - c. The facility shall document that it has provided such notification.
 - d. The facility head or Department office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.
3. Coordinated Response: Each facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership. This plan will be kept current and include names and telephone numbers of coordinating parties and be a part of Attachment 7, PREA Local Procedure Directive and Coordinated Response Plan.
4. Protection Against Retaliation:
- a. Anyone who retaliates against a staff member or an offender who has reported an allegation of sexual abuse or Sexual Harassment or who has participated in a subsequent investigation shall be subject to disciplinary action.
 - b. The Department shall protect offenders and staff members who report sexual abuse, or Sexual Harassment from retaliation. **The**

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Warden/Superintendent shall designate a staff member to serve as the facility Retaliation Monitor and identify them as such in the PREA Local Procedure Directive and Coordinated Response Plan (Attachment 7). Multiple protection measures include offender housing changes or transfers, removal of alleged staff members or offender abusers from contact with victims, and emotional support services for offenders or staff members who fear retaliation for reporting or for cooperating with investigations.

- c. The designated Retaliation Monitor shall, for at least 90 days following a report of abuse, monitor the conduct and treatment of offenders or staff members who reported the sexual abuse or who participated in an investigation, to see if there are any changes that may suggest possible retaliation, and will act promptly to remedy any such retaliation.
 - i. This monitoring will include review of any offender disciplinary reports, housing or program changes, or negative performance reviews or reassignments of staff members. Periodic in-person status checks shall be made by the monitor as well. Attachment 8, Retaliation Monitoring Checklist, shall be completed for each offender monitored. The original shall be kept in a master file by the monitor and a copy placed with the SART incident report upon completion.
 - ii. This monitoring will include negative performance reviews or reassignments of staff members. Attachment 8, Retaliation Monitoring Checklist, shall be completed for each employee monitored. The original shall be kept in a master file by the monitor.
 - iii. Such monitoring shall continue beyond 90 days if the initial monitoring indicates a continuing need. The obligation for monitoring will terminate if the allegation is unfounded.

G. Investigations:

1. All reports of sexual abuse or Sexual Harassment will be considered

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allegations and will be investigated.

2. The local SART is responsible for the administrative investigation of all allegations of sexual abuse or Sexual Harassment. Attachment 4, Sexual Allegation Response Checklist will be completed for all PREA allegations. In cases where allegations are made against staff members and the SART inquiry deems the allegation is unfounded or unsubstantiated by evidence, the case can be closed at the facility level. If the allegation is criminal in nature, an interview shall not be conducted, nor will a statement be collected from the accused perpetrator without first consulting the Regional SAC.
3. Appointing authorities or their designees shall report all allegations of sexual assault with penetration and those with immediate and clear evidence of physical contact, to their Regional Director, Regional SAC and the Department's PREA Coordinator immediately upon receipt of the allegation.
 - a. Where sexual abuse is alleged and cannot be cleared at the local level (as indicated in G.2. of this section), the Regional SAC shall determine the appropriate response upon notification. If this appropriate response is to open a criminal investigation, the Regional SAC shall assign an agent or investigator who has received special training in sexual abuse investigations.
 - b. Agents and investigators shall gather and preserve direct and circumstantial evidence including any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
 - c. The credibility of the victim, suspect, or witness shall be assessed on an individual basis and will not be determined by the person's status as offender or staff member. An offender who alleges sexual abuse shall not be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
 - d. Upon conclusion of the criminal investigation, OPS must notify the Warden/Superintendent of the disposition of the case. The Warden must

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ensure that Attachment 3, PREA Disposition Offender Notification Form is completed and a copy is both given to the offender and placed in the case file. On completion of this procedure, the PREA Coordinator's Office will be notified via PREA.report@gdc.ga.gov of the disposition and the date in which the offender was notified.

4. At the conclusion of each SART investigation, Attachment 6, PREA Investigative Summary shall be submitted to the PREA Unit for administrative review.
5. For investigations of allegations of sexual abuse, the Department shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecution in accordance with SOP 103.06, Investigations of Allegations of Sexual Contact, Sexual Abuse, and Sexual Harassment of Offenders.
6. All sexual abuse and Sexual Harassment investigations shall be prompt, thorough, and objective.
7. Administrative and criminal investigations shall include an effort to determine whether staff member actions or failures to act contributed to the abuse. This shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind the credibility assessments, and investigative facts and findings.
8. Substantiated Allegations of conduct that is deemed criminal shall be referred for prosecution.
9. OPS shall maintain all such written reports for as long as the alleged abuser is incarcerated or employed by the Department, plus five years.
10. The departure of the alleged abuser or victim from the employment or control of the Department shall not provide a basis for terminating the investigation.
11. Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

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12. When outside agencies investigate sexual abuse, the Department shall cooperate with the outside investigators and shall endeavor to remain informed about the progress of the investigations.
13. There shall be no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or Sexual Harassment are substantiated.
14. Following the close of an investigation into an offender's allegation that he or she suffered sexual abuse in a Department facility, the facility shall inform the offender as to whether the allegation has been determined to be substantiated, unsubstantiated, unfounded, unsubstantiated-forwarded to OPS or substantiated-forwarded to OPS. This will be completed by a member of the local SART unless appointing authority delegates to another designee. In the event an allegation is forwarded to OPS for investigation, the facility shall notify the offender of the outcome of the OPS investigation upon completion. Such notifications or attempted notifications shall be documented on Attachment 3, PREA Disposition Offender Notification Form. The Department's obligation to report under this standard shall terminate if the offender is released from the Department's custody.

H. Discipline:

1. Disciplinary Sanctions for Staff Members:
 - a. Staff members who engage in sexual abuse with an offender shall be banned from correctional institutions and subject to disciplinary action, with termination being the presumptive discipline, and may also be referred for criminal prosecution when appropriate.
 - b. Disciplinary sanctions for violations of Department policy related to Sexual Harassment will be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff members with similar histories.
 - c. All terminations for violations of the Department sexual abuse or Sexual

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Harassment policies, or resignations by staff members that would have been terminated if not for their resignation shall be reported to law enforcement agencies, unless the activity was clearly not criminal. These shall also be reported, as required, to the Georgia Peace Officers Standards and Training Council (POST).

- d. OPS shall refer all substantiated cases of Offender to Offender Sexual Abuse and Staff on Offender Sexual Abuse for criminal prosecution.
2. **Contractors and Volunteers:** Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with offenders and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies. The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with offenders, in the case of any other violation of Department sexual abuse or Sexual Harassment policies by a contractor or volunteer.
 3. **Disciplinary Sanctions for Offenders:**
 - a. The Department prohibits all consensual sexual activity between offenders, and offenders may be subject to disciplinary action for such activity. Consensual (non-coerced) sexual activity between offenders does not constitute sexual abuse, but is considered a disciplinary issue. Note: All instances of sexual contact between offenders will be treated as non-consensual unless proven otherwise during the course of an investigation.
 - b. Offenders shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the offender engaged in offender-on-offender sexual abuse or a criminal finding of guilt for offender-on-offender sexual abuse. These sanctions shall be imposed in accordance with SOP 209.01, Offender Discipline.
 - c. Offenders shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the offender engaged in offender-on-offender Sexual Harassment. These sanctions shall be imposed in accordance with SOP 209.01, Offender Discipline.

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- d. Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the offender's disciplinary history, and the sanctions imposed for comparable offenses by other offenders with similar histories.
- e. The disciplinary process shall consider whether the offender's mental disabilities or mental illness contributed to behavior when determining what type of sanction, if any, will be imposed. See SOP 508.18 MH/MR Discipline Procedures.
- f. If the facility offers therapy, counseling or other interventions to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to offer or require the perpetrator to participate in such interactions as a condition of access to programming or other benefits.
- g. An offender may be disciplined for sexual contact with a staff member only upon a finding that the staff member did not consent to such contact.

NOTE: Offender to Staff Sexual Abuse is not covered under PREA.

- h. For the purposes of a disciplinary action, a report of sexual abuse made in good faith upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish sufficient evidence to substantiate the allegation.
- i. Following an administrative finding of malicious intent on behalf of the offender making a false report, regardless of method used, the offender shall be subject to disciplinary sanctions pursuant to a formal disciplinary process in accordance with SOP 209.01 Offender Discipline.
 - i. Any person who willfully and knowingly gives or causes a false report of a crime to be given to any law enforcement officer or agency of this state is prosecutable under O.C.G.A. § 16-10-26 False report of a crime. Any individual proven to make a false allegation (defined in 3.i. of this section) will receive a disciplinary

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report and may be subject to prosecution under this statute.

- ii. Any person who willfully and knowingly gives or causes a false report of Sexual Harassment will be subject to disciplinary action in accordance with SOP 209.01 Offender Discipline.

I. Medical and Mental Health Care: The Department shall provide prompt and appropriate medical and mental health services in compliance with 28 CFR § 115 and in accordance with the Department SOPs regarding medical and mental health care.

J. Data Collection and Review:

1. Monthly Sexual Abuse Program Review. The facility SAIRT shall conduct a sexual abuse incident review at the conclusion of every substantiated and unsubstantiated sexual abuse investigation to review and assess the facility's PREA prevention, detection, and response efforts as stipulated in Attachment 9, Sexual Abuse Incident Review Checklist. Reviews are not necessary for incidents with a disposition of unfounded.
2. The review team shall:
 - a. Each facility shall submit a report to the Department's PREA Analyst each month using the electronic spreadsheet provided from the PREA Coordinator's office. This form shall be submitted by e-mail no later than the fifth calendar day of the month following the reporting month. All allegations investigated within the month shall be included on this report along with the appropriate disposition. The monthly report shall be completed in accordance with the Facility PREA Log User Guide.
 - b. The Department shall review data collected and aggregated of all sexual abuse allegations in order to improve staff performance, identify problem areas, and improve facility operations and offender sexual safety. The Department shall publish the data in an annual report, comparing each years' data, and provide an assessment of progress in addressing offender sexual abuse. It shall make this publicly available on its website.

I. Audits: The Department shall conduct audits pursuant to 28 C.F.R. §115.401-405.

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Each facility operated by the Department shall be audited every three (3) years on a schedule determined by the Department's PREA Coordinator. Federal Auditors determine compliance with federal standards and shall not dictate facility management, or procedural decisions. All auditor suggestions and findings shall be referred to the agency PREA Coordinator for review.

County facilities and Private facilities operated on behalf of the Department (housing state offenders) must meet the same audit requirements. These entities are responsible for scheduling and funding their audits. All auditors shall be certified by the Department of Justice. Each facility shall bear the burden of demonstrating compliance with the federal standards. A copy of the final report shall be submitted to the Department's PREA Coordinator upon completion of the audit and must be conducted every three years.

V. **Attachments:**

- Attachment 1: 208.06 Att.1, Sexual Abuse/Sexual Harassment Prison Rape Elimination Act (PREA) Education Acknowledgement Statement;
- Attachment 2: 208.06 Att. 2, PREA Sexual Victim/Sexual Aggressor Classification Screening Instrument;
- Attachment 3: 208.06 Att. 3, PREA Disposition Offender Notification Form;
- Attachment 4: 208.06 Att. 4, Sexual Allegation Response Checklist;
- Attachment 5: 208.06 Att. 5, Procedure for SANE Evaluation/Forensic Collection;
- Attachment 6: 208.06 Att. 6, PREA Investigative Summary;
- Attachment 7: 208.06 Att. 7, PREA Local Procedure Directive and Coordinated Response Plan;
- Attachment 8: 208.06 Att. 8, Retaliation Monitoring Checklist;
- Attachment 9: 208.06 Att. 9, Sexual Abuse Incident Review Checklist;
- Attachment 10: 208.06 Att. 10, PREA Initial Notification Form; and
- Attachment 11: 208.06 Att. 11 Staffing Plan Template.

VI. **Record Retention of Forms Relevant to this Policy:**

Retention of PREA related documents and investigations shall be securely retained and made in accordance with the following schedule:

- A. Sexual abuse data, files, and related documentation - at least 10 years from the date of the initial report.

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- B. Criminal investigation data, files, and related documentation - for as long as the alleged abuser is incarcerated or employed by the agency, plus five (5) years; or 10 years from the date of the initial report, whichever is greater.
- C. Administrative investigation data, files, and related documentation - for as long as the alleged abuser is incarcerated or employed by the agency, plus five (5) years; or 10 years from the date of the initial report, whichever is greater.

**GEORGIA DEPARTMENT OF CORRECTIONS
SEXUAL ABUSE/SEXUAL HARASSMENT
PRISON RAPE ELIMINATION ACT (PREA) EDUCATION
ACKNOWLEDGEMENT STATEMENT**

Employee Type (Check one):

Employee

Contractor/Volunteer

I have received the appropriate training for my employee status in accordance with SOP 208.06, *Sexually Abusive Behavior Prevention and Intervention Program*. I understand the Department's zero-tolerance for sexual abuse of offenders. I understand that I am not to engage in any behavior of a sexual nature with an offender and to report to a nearby supervisor if I witness such conduct or if someone reports such conduct to me. I further understand that my authorization to enter, visit, or work at a correctional institution where there are offenders is based on my agreement to comply with the Department's policy on sexual abuse, and sexual harassment. I also understand that any violation of the policy will result in disciplinary action, including termination, or that I will be banned from entering any correctional institution. Finally, I understand that that engaging in sexual contact with an offender is a felony offense punishable by imprisonment of not less than one, nor more than 25 years, and a fine of \$100,000, or both (O.C.G.A. §16-6-5.1.) I further understand that under O.C.G.A. §16-6-5.1, an offender cannot consent to sexual activity with staff, contractors, or volunteers.

This is to acknowledge I understand the Department's policy on Zero Tolerance of Sexual Abuse and Sexual Harassment of offenders. As a condition of employment I will abide by the terms and conditions of this policy.

Agency/ Company Name

Signature

Date

Typed or printed name

GEORGIA DEPARTMENT OF CORRECTIONS

PREA SEXUAL VICTIM/SEXUAL AGGRESSOR CLASSIFICATION SCREENING INSTRUMENT

Institution

Offender Name

GD

C #

Sexual Victim Factors

- | | <u>Yes</u> | <u>No</u> |
|---|--------------------------|--------------------------|
| 1. Is the offender a former victim of institutional (prison or jail) rape or sexual assault? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Is the offender 25 years old or younger or 60 years or older? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the offender small in physical stature?
(BMI<18.5) NOTE: ensure inmate height and weight are correct so SCRIBE can calculate the BMI accurately. | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Does the offender have a developmental disability/mental illness/physical disability? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Is this the offender's first incarceration ever (prison or jail)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Is or is perceived to be gay/lesbian/bi-sexual/transgender/intersex or gender non-conforming? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Does the offender have a history of prior sexual victimization (sexual abuse)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is the offender's own perception that of being vulnerable? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Does the offender have a criminal history (convictions) that is exclusively non-violent? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Does the offender have a conviction(s) for sex offenses against an adult or child? | <input type="checkbox"/> | <input type="checkbox"/> |

Total Number of Checks: Items 2 – 10 _____

Sexual Aggressor Factors

- | | | |
|--|--------------------------|--------------------------|
| 1. Does the offender have a past history of institutional (prison or jail) sexually aggressive behavior? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does the offender have a history of sexual abuse/sexual assault towards others (adult and/or child)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the offender's current offense sexual abuse/sexual assault toward others (adult and/or child)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Does the offender have a prior conviction(s) for violent offenses? | <input type="checkbox"/> | <input type="checkbox"/> |

Total Number of Checks: Items 2-4 _____

Additional Comments/Observations:

Retention Schedule: This form shall be maintained for 10 years from the date of the initial report.

Victim/Aggressor Classification Ratings

Sexual Victim Factor Rating:

Male Inmates: If three (3) or more of questions # 2 – 10 are checked, the offender will be classified as a **POTENTIAL VICTIM**. This will generate the PREA POTENTIAL VICTIM icon on the SCRIBE Offender page.

Female Inmates: If five (5) or more of questions # 2 – 10 are checked, the offender will be classified as a **POTENTIAL VICTIM**. This will generate the PREA POTENTIAL VICTIM icon on the SCRIBE Offender page.

Sexual Aggressor Factor Rating:

If question # 1 is answered yes, the offender will be classified as a **KNOWN AGGRESSOR** regardless of the other questions. This will generate the PREA AGGRESSOR icon on the SCRIBE Offender page.

If two (2) or more of questions # 2 – 4 are checked, the offender will be classified as a **POTENTIAL AGGRESSOR**. This will generate the PREA POTENTIAL AGGRESSOR icon on the SCRIBE Offender page.

In situations where the instrument classifies the offender as **Victim and Aggressor**, you must thoroughly review the offender's history to determine which rating will drive the offender's housing, programming, etc. This must be documented in the offender SCRIBE case notes, with an alert note indicating which the controlling rating is.

Retention Schedule: This form shall be maintained for 10 years from the date of the initial report.

GEORGIA DEPARTMENT OF CORRECTIONS
PREA Disposition Offender Notification Form

Offender Name: _____ GDC #: _____ Allegation Date: _____

Allegation Type:
 (Select only one)

S/I Abuse	<input type="checkbox"/>
S/I Harassment	<input type="checkbox"/>
I/I Abuse	<input type="checkbox"/>
I/I Harassment	<input type="checkbox"/>

Disposition:
 (Select all that apply)

Your PREA allegation was investigated by the Sexual Assault Response Team (SART) and was determined to be:

Unfounded	<input type="checkbox"/>	If the disposition is determined to be both substantiated and Forwarded to OPS, check both boxes
Unsubstantiated	<input type="checkbox"/>	
Referred to OPS	<input type="checkbox"/>	If the disposition is determined to be both unsubstantiated and Forwarded to OPS, check both boxes.
Substantiated*	<input type="checkbox"/>	

*If Substantiated, see action taken section.

Action Taken:
 (Select all that apply)

<input type="checkbox"/>	The staff member is no longer posted within the offender's unit.
<input type="checkbox"/>	The staff member is no longer employed at the facility.
<input type="checkbox"/>	The staff member has been indicted on a charge related to sexual abuse with the facility.
<input type="checkbox"/>	The staff member has been convicted on a charge related to sexual abuse within the facility.
<input type="checkbox"/>	The staff member has been convicted on a charge related to sexual abuse within the facility.
<input type="checkbox"/>	The alleged abuser (offender) has been indicted on a charge related to sexual abuse within the facility.
<input type="checkbox"/>	Other: (MUST INCLUDE EXPLANATION IF OTHER IS CHECKED)

Definitions:

Unfounded: Based on factual evidence SART proved the allegation did not occur.
 Unsubstantiated: SART could neither prove nor disprove the allegation occurred.
 Referred to OPS: SART determined additional review is warranted. Case forwarded to Internal Investigations.
 Substantiated: SART determined that the allegation did occur.

Offender Signature	Date
Witness	Date
SART Member/ Warden's Designee Signature	Date

Retention Schedule: Upon completion, this form shall be placed in the PREA investigative case file and maintained for the length of the offender's incarceration plus five (5) years, or 10 years from the initial report, whichever is greater.

Procedure for SANE Evaluation/Forensic Collection

- A. Initial Report of Sexual Abuse or Assault
- a. Initial notification or reporting of sexual abuse or assault will be handled in accordance with GDC SOPs 507.04.84, 208.06 and 508.22.
 - i. Medical staff shall conduct an initial assessment of the offender to determine if there is evidence of any physical trauma requiring immediate medical intervention in accordance with good clinical judgment.
 - ii. Medical staff shall immediately initiate all necessary urgent/emergent treatment for bleeding, wounds and other traumas.
 - b. Nursing staff shall complete the Nursing Protocol Assessment form for alleged Sexual Assault. This shall be filed in the nurse's notes section of the medical record.
 - c. Facility clinicians (MD/NP/PA) shall document the physical examination in the progress notes.
 - d. When medically indicated, medical staff shall initiate arrangements to transfer the offender accompanied by a qualified staff member to the designated emergency facility for continued treatment and collection of forensic evidence. The Urgent/Emergent and Medical PREA Log will be completed.
 - e. Upon return from hospital SOP 507.04.84 and 508.22 shall be followed.
- B. Collection of evidence by SANE Nurse on-site:
- a. The following facilities have SANE Nurses assigned:
 - i. Small facilities shall use their assigned medical catchment State Prison for SANE Nurse services.
 - b. Notification of SANE Nurse
 - i. Offenders must consent to a SANE examination, prior to contacting SANE (Attachment #10 Consent for Operation or Invasive Procedure).
 - ii. If the alleged assault occurred within 72 hours of the reported incident, and the offender does not require transport to the ER, the designated facility SANE Nurse shall be immediately notified and an appointment scheduled for the collection of forensic evidence. This will occur only if there has been penetration reported by the patient. For females and males this also includes oral penetration. Otherwise, no rape kit will be collected.

NOTE: The 72 hours begins at the time the alleged assault occurred.

- iii. If the sexual assault occurred more than 72 hours previously, the decision on whether the evaluation is done by a local hospital, by the SANE Nurse, or facility staff will be made on a case-by-case basis. The decision shall be made by the Health Authority in consultation with the Facility Investigator/in accordance with GDC PREA Policy.
 - iv. For sites without a designated or available SANE Nurse, a designated catchment facility, or the SANE is not available within a reasonable time frame, the Appointing Authority, in consultation with the Regional SAC, shall coordinate with the Office of Health Services (OHS) to arrange for the offender to be transported to a hospital for collection of the forensic evidence.
 - c. A list of the SANE Nurse call schedule shall be posted in the medical unit along with the physician on-call schedule and for sites without 24-hour nursing, designated security locations. The SANE Nurse Call Roster shall include the SANE Nurses approved to enter the facility.
 - d. Once the SANE Nurse is notified, the Warden or designee shall be notified of the date and time for the scheduled forensic assessment and collection. Date and time of SANE Nurse notification shall be placed on the log.
 - e. The offender will remain in a designated area until the forensic exam is completed. The Consent for Treatment Form will be completed consenting to the exam by the SANE Nurse prior to scheduling the visit. *See Refusal of Treatment. During this time the process should be explained to the offender with confirmation they understand what to expect.
- C. SANE Assessment/Forensic Collection:
- a. Patient Preparation:
 - i. An exam room must be ready at the time the SANE exam is scheduled and the SANE Nurse arrives.
 - ii. The patient is allowed to eat and drink if no oral penetration has occurred.
 - iii. If oral penetration occurred, the patient should be nil per os NPO, if possible, until the exam is completed. If the exam does not occur within 8 hours, the patient can eat or drink as necessary. However, if the patient cannot tolerate the NPO status, limited food and drink can be consumed after 4 hours. This will not preclude the exam from being done. Patients with medical conditions will be assessed for nutritional and fluid needs on a case-by-case basis, i.e. diabetics.
 - iv. The patient should not change clothes, underwear and should not shower or brush teeth until the exam is done. The patient should be counseled as to the reason due to the importance of not destroying evidence.

- v. If at all possible clothes should not be removed until the SANE Nurse is present. If clothes are removed they should be removed with victim standing on exam paper and all clothes must be placed in **PAPER** bags. Each article of clothing must be placed in separate **PAPER** bags. The bags must be sealed. The bag must also be labeled with the inmate's name, date and time.
 - vi. If no signs or symptoms of bleeding or severe trauma are present or witnessed by medical staff, which would have required immediate first aid intervention, no medical exam should occur until the SANE Nurse completes the forensic exam.
 - vii. Medical staff should wear exam gloves at all times when interfacing/assisting/assessing the patient until the SANE exam has been completed.
- b. Equipment:
- i. The SANE Nurse shall arrive with an approved SANE Kit which will include the following:
 - a) Camera;
 - b) Forensic Ruler;
 - c) Toluidine Swabs;
 - d) 10% Acetic Acid or KY Jelly;
 - e) Red Top Tube (Lab);
 - f) Pipette;
 - g) Sterile Water Syringes (2);
 - h) SANE Forms; and
 - i) Goggles.

NOTE: This is subject to change
 - ii. The exam room must have the following available and ready at the scheduled time of the SANE exam:
 - a) All routine exam supplies, i.e. gloves, gauze pads, etc.;
 - b) Woods Lamp/Ultraviolet light;
 - c) Sterile Water;
 - d) Rape Kit (make sure it is not expired);
 - e) Index Cards;
 - f) Blood Tube, or similar product will be available and a rack to hold blood tubes and for drying the swabs After the evidence is collected;
 - g) Table Exam Paper;
 - h) Paper Bags (small and large [grocery size]); and
 - i) Supplies for collection of required labs.
- c. Procedures:
- i. Lab - The following labs will be drawn:

- a) Perpetrator:
 - i. Confirm HIV status
 - ii. Hepatitis profile
 - iii. Rapid Plasma Reagin (RPR)
- b) Victim:
 - i. HIV
 - ii. Hepatitis profile
 - iii. RPR

NOTE: All changes in HIV status will be entered into SCRIBE.

- ii. Treatment: When a SANE exam is completed on site, the facility provider or designee (i.e. On-Call provider) shall be responsible for ordering prophylactic treatment for STIs, as well as pregnancy prophylactics if applicable. This includes follow-up of all labs collected.
 - a) All necessary clinical treatment must be initiated by a clinical practitioner; Recommendations include:
 - i. Female Patients
NOTE: Patients should have a pregnancy test with results before administering medication.
 - ii. Coverage for GC, BV, Chlamydia and Trichomonas
Recommended Regimens
Ceftriaxone 250 mg IM in a single dose
PLUS
Metronidazole 2 g orally in a single dose
PLUS
Azithromycin 1 g orally in a single dose
OR
Doxycycline 100 mg orally twice a day for 7 days
 - iii. Patients Penicillin Allergic
Azithromycin 2 g PO
PLUS
Metronidazole 2 gms orally in a single dose
 - iv. MALE PATIENTS
Recommended Regimens
Ceftriaxone 250 mg IM in a single dose
PLUS
Metronidazole 2 g orally in a single dose
PLUS
Azithromycin 1 g orally in a single dose
 - iii. There shall be a follow-up visit by a clinician 3 working days following exam.

- d. Documentation Forms:

- i. SANE Nurses shall bring a copy of their assessment forms which they will complete on site.
 - ii. Once completed, the SANE Nurse shall leave a copy of their nurses notes which shall be filed in the medical record with the Nursing Protocol Form for Sexual Assault.
 - iii. The SANE Nurse shall also leave a copy of their Forensic Exam documentation which shall be filed in a designated locked filing cabinet in medical administration, along with copies of the complete GDC Facility Chain of Custody Form.
 - iv. These shall be retained in accordance with the medical retention schedule.
- e. Chain of Custody
- i. Once the rape kit is collected, required legal chain of custody shall be followed until it is sent to the GBI lab. Until it leaves the facility it must remain locked up.
 - ii. The Chain of Custody shall be from SANE Nurse to Security Shift Supervisor or at a level above.
 - iii. The Security individual collecting the kit shall sign the Medical PREA Log. All other Chain of Custody policies shall be followed including completion of the GDC Facility Chain of Custody form. A copy of this form shall be given to medical and attached to the completed SANE Exam documentation left by the SANE Nurse.
- f. Refusal of Treatment:
- i. Individuals refusing to be evaluated following a report of sexual abuse shall be counseled regarding the medical and legal implication of foregoing the evaluation. This shall be thoroughly documented in the medical record and on a refusal of treatment form.
- D. Referrals for MH Evaluation and Counseling:
- a. Referrals for MH evaluation and counseling will be done in accordance with SOP 507.04.84 and 508.22.
- E. Medical PREA Log and SANE Invoice:
- a. The reported incident shall be entered on the PREA Medical Log. The log shall be completed in its entirety to include the home of the victim for which forensic evidence is being collected.

- b. The Health Services Administrator (HSA) or Director of Nursing (DON) shall forward the log electronically in a confidential manner to the Administrative Assistant to the Director of Patient Care Services, by the 5th calendar day of the month for the previous month. The log shall be reviewed for completeness before sending.
- c. The HSA shall review all invoices for the forensic exam upon receipt. Once verified, invoices will be forwarded to Georgia Correctional HealthCare (GCHC) for processing in accordance with current budgetary practices.

PREA Investigative Summary

Facility: _____ Date of Incident: _____
 Location: _____ Time of Incident: _____
 Incident Report #: _____

Type of Allegation (Select one):	Alleged Victim(s)	Alleged Aggressor(s)	
_____ S/I Abuse	Name	ID#	Name
_____ S/I Harassment			ID#
_____ I/I Abuse			
_____ I/I Harassment			

Summary of Investigation: _____ How did you arrive at your disposition? _____

Disposition (Select one):	Evidence gathered:	Location:	Witnesses:	
_____ Substantiated			Name	ID#
_____ Unsubstantiated				
_____ Unfounded				
_____ Not PREA				
Outcome (select one)				
_____ Closed				
_____ Forwarded to				
_____ OPS				

Actions taken:

Disciplinary action taken (toward staff or inmates): N/A

Name/ Title of person submitting report

Signature/ Title

Retention Schedule: Upon completion, this form shall be maintained for as long as the alleged abuser is incarcerated or employed by the agency, plus five (5) years: or 10 years from the date of the initial report, whichever is greater. This form shall be placed in the PREA case file as well as emailed to the PREA Unit.

(Facility Name) PREA Local Procedure Directive and Coordinated Response Plan

The purpose of this directive is to provide a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators and facility leadership.

STAFF CONTACT INFORMATION

FACILITY NAME

Facility Name			
Position	Name	Phone Number	Email Address
Warden			
PREA Compliance Manager			
SART Retaliation Monitor			
PREA Compliance Manager			
SART Security			
SART Mental Health			
SART Medical			
Staff Training			
Inmate Education			

REPORTING DUTIES

Upon immediate notification of a sexual abuse, these actions should be taken in the order noted below.

FIRST STEPS

- Notify your Shift OIC and ensure the victim is separated from the aggressor.
- Instruct the alleged victim to refrain from changing clothes, drinking, eating, brushing teeth, or any other activity that could destroy any physical evidence.
- If known, instruct the alleged perpetrator to refrain from changing clothes, drinking, eating, brushing teeth, or any other activity that could destroy any physical evidence.
- Secure the crime scene if applicable to restrict access to the area and to prevent handling of evidence until an internal investigator arrives.
- Ensure the victim receives immediate medical attention (in accordance with SOP 507.04.84, Medical Management of Suspected Sexual Abuse and SOP 507.04.91, Medical Management of Suspected Sexual Assault, Abuse or Harassment), followed by a mental health evaluation within 24 hours, (in accordance with SOP 508.22, Mental Health Management of Suspected Sexual Abuse, Contact or Harassment).
- If applicable, ensure SANE protocol is enacted in accordance with 208.06 Attachment 5 and the Department's PREA Coordinator is notified.
- Implement Local PREA Notification Procedures to ensure all required personnel are notified that an incident has occurred.
- Ensure the incident report and supporting documentation has been completed before leaving the institution for the day.
- Ensure the victim receives a SART evaluation promptly within 24 hours.
- Ensure the alleged victim is housed separately from the alleged perpetrator; inmate shall be placed in involuntary protective custody only after other alternatives have been exhausted to ensure the safety of the victim.
- If applicable, ensure the alleged perpetrator has been placed in administrative segregation.
- If the alleged perpetrator is a staff member, separate the staff member from the alleged victim pending further instructions from Warden/Superintendent.

Retention Schedule: This form shall be utilized as instructed within the SOP and retained until obsolete or revised.

- If applicable, consult with the SART the Regional Director, and SAC within 72 hours of the reported incident to determine how long the alleged victim or perpetrator should remain segregated from the general population, and document the final decision in the inmate's file with specific reasons for returning the offenders to the general population or keeping the offenders segregated.
- If the alleged victim is under the age of 18, the Regional Director in conjunction with the Director of Investigations, or designee, shall report the allegation to the Department of Family and Children Services, Child Protective Services Section, reference O.C.G.A §19-7-5.
- If the alleged victim is considered a vulnerable adult under O.C.G.A. §30-5-4, then the Director of Investigations, or designee, will make notification to the appropriate outside law enforcement agency.

Safe Housing

Identify the location of this facility's safe dorm(s) and or safe beds in this section.

Identifying "at risk" Inmates at this facility

Describe the process in place at this facility to identify inmates that have a serious sexual predation history or who are "at risk" of engaging in sexually abusive behavior and or inmates who are "at risk" of sexual victimization while in GDC custody. Also explain the process used to identify these inmates to the appropriate staff. Keep it brief and to the point.

Upon immediate notification of a sexual harassment or report of retaliation these actions should be taken in the order noted below.

- **Notify your immediate supervisor who should immediately and directly forward this information to: (insert the appropriate information for your facility: the SART Leader, Compliance Manager, Retaliation Monitor.**

**GEORGIA DEPARTMENT OF CORRECTIONS
RETALIATION MONITORING CHECKLIST**

Select one: Employee Offender **Incident Report #:** _____

Name: _____ **GDC/EMP ID #:** _____

Location of Incident: _____ **Date of Incident:** _____

OFFENDER	30 Day	60 Day	90 Day
Offender Disciplinary Report (s) History Review			
Offender Housing Unit Placement Reviewed			
Offender Transfer (s) Placement Review			
Offender Program (s) History Review			
Offender Work Performance Review			
Offender Schedule History Review			
Offender Case Note(s) Review			
EMPLOYEE	30 Day	60 Day	90 Day
Review Employee Post Rotation (Security Only)			
Review of Employee Job Duties			
Review of Employee Work Schedule History			
Review of Employee Work Location			
Review of Employee Personnel File (letters of concern, reprimands, and/or adverse actions.)			
Review of Employee Performance Management Documents			

Check One: 90 Day Review Completed No Follow Up
 90 Day Review Completed , extended 90 More Days

30 Day Review: _____ <p style="text-align: center;">Signature/Title</p> 60 Day Review: _____ <p style="text-align: center;">Signature/Title</p> 90 Day Review: _____ <p style="text-align: center;">Signature/Title</p> Random Review: _____ <p style="text-align: center;">Signature/Title</p>	<p style="text-align: center;">Findings (Required)</p> 30 Day Review: _____ 60 Day Review: _____ 90 Day Review: _____ Random Review: _____ _____ _____
---	---

 Warden/Superintendent Signature (Only after 90 day review) _____
Date

Comments: _____

Retention Schedule: Upon Completion, this form shall be maintained for as long as the alleged abuser is incarcerated or employed by the agency, plus five (5) years; or 10 years from the date of the initial report, whichever is greater.

** This form shall be scanned and emailed to the PREA Coordinator.

<p>Facility Name: _____</p> <p style="font-size: 1.2em; font-weight: bold;">Sexual Abuse Incident Review Checklist</p> <p>Incident Report #: _____</p>
--

The facility shall conduct a sexual abuse incident review at the conclusion of every substantiated and unsubstantiated sexual abuse investigation. The review shall be conducted during the monthly designated PREA meeting but no more than within 30 days of the conclusion of the investigation.

I. Offender Name: _____ **Date:** _____

II. Checklist:

1. Was the incident report entered into SCRIBE in accordance with SOP 203.03 Incident Report? Yes ___ No ___
2. Did the allegation or investigation indicate a need to change policy or practice to prevent, detect, or respond to sexual abuse? Yes ___ No ___
3. Did the allegation or investigation indicate a motivation by race, ethnicity, gender identity, lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility? Yes ___ No ___
4. Was an examination of the area in the facility where the incident allegedly occurred conducted to determine whether physical barriers of the area may enable abuse?
List findings (if any) Yes ___ No ___
5. In the area where the incident allegedly occurred were there adequate staffing levels in that area during different shifts? Yes ___ No ___
6. In the area where the incident allegedly occurred should monitoring technology be deployed or augmented to supplement supervision by staff? Yes ___ No ___

If yes is checked on any of the above, state the reason why: _____

Name and title of all staff involved in the review:

Name	Title	Name	Title

III. Improvements:

The facility shall implement recommendations for improvement, or shall document the reason for not doing so. Were recommendations put in place? Yes ___ No ___
If no, List why: _____

IV. Warden/Superintendent review:

1. Date Received: _____
2. Comments: _____
3. Signature of Warden/Superintendent or Designee: _____

V. PREA Compliance Manager notification:

Date sent to PREA Compliance Manager: _____

PREA Initial Notification Form

Facility: _____ Date of Incident: _____
 Location: _____ Time of Incident: _____
 Incident Report #: _____

Type of Allegation (Select one):	Alleged Victim(s)		Alleged Aggressor(s)	
	Name	ID#	Name	ID#
_____ S/I Abuse				
_____ S/I Harassment				
_____ I/I Abuse				
_____ I/I Harassment				

Summary of Incident:

How were you notified of this incident? (Grievance, Hotline, Staff, Ombudsman, 3rd party, etc.)

	Y/ N	
SART notified?	_____	Name _____ By whom _____ Date/Time _____
	Y/ N	
SANE notified?	_____	If yes, name _____ By whom _____ Date/Time _____
	Y/ N	
Criminal Investigations notified?	_____	If yes, name _____ By whom _____ Date/Time _____
	Y/ N	
Internal Affairs notified?	_____	If yes, name _____ By whom _____ Date/Time _____
	Y/ N	
PREA Coordinator notified?	_____	If yes, name _____ By whom _____ Date/Time _____

Name/ Title of person submitting report

Signature/ Title

Retention Schedule: Upon completion, this form shall be placed in the PREA investigative case file and maintained for the length of the offender's incarceration plus five (5) years, or 10 years from the initial report, whichever is greater.

Retention Schedule: Upon completion, this form shall be placed in the PREA investigative case file and maintained for the length of the offender's incarceration plus five (5) years, or 10 years from the initial report, whichever is greater.

DEF_1412

DECLARATION OF KHALIAH REEVES

I, Khaliah Reeves, declare as follows:

1. My name is Khaliah Reeves and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true, and I give this declaration freely and for use as evidence in the case styled *Ashley Diamond v. Timothy Ward*, Case No. 5:20-cv-453 in the U.S. District Court for the Middle District of Georgia.

2. I am employed by the Georgia Department of Corrections as a Lieutenant at Coastal State Prison (CSP) which is located in Garden City, Georgia. As of August 2021 I will have worked at CSP for ten years. I made Lieutenant in October 2020.

3. In October 2020 I was working as the first shift Lieutenant. First shift is the time period from 6:00 a.m. to 6:00 p.m. However, before the shift starts there is a briefing at 5:45 a.m., and my usual working hours are 5:00 a.m. to 7:00 p.m.

4. As first shift Lieutenant, my responsibilities include making the post assignments for the shift, supervising the shift Sergeants, conducting counts, responding to emergencies, and in addition there are other general tasks and responsibilities that I supervise or that I may handle on each shift.

5. On October 31, 2020, I was in the process of getting the trash out of the institution which is a process that involves security steps when I received a radio call for a supervisor. When I received the call I closed the back gate to the institution where I was located and proceeded to N building.

6. When I arrived at N building offender Ashley Diamond was standing either outside the building or in the lobby of the building. Correctional Officer Courtney Brown who was assigned to work N building on that shift reported to me that she caught offender Diamond and offender [John Doe] having sex and she then separated the two offenders. Because I knew that Diamond was classified for PREA risk purposes as a PREA victim I contacted the Duty Officer to report the incident.

7. I made a phone call to the Duty Officer from the phone inside the N building control room. I cannot recall who was working as the Duty Officer at that time. On the phone call I related to the Duty Officer what CO Brown told me. The Duty Officer asked if the two offenders were separated and I stated that they were. The Duty Officer also asked to speak with CO Brown to get the details of what occurred. I recall that I put CO Brown on the phone and I heard CO Brown tell the Duty Officer that she entered the range to do count, she pushed open Diamond's cell door, she saw Diamond and [John Doe] on the bottom bunk having sex and Diamond's penis was in [John Doe] anus, neither of them heard her so she said "aye" and Diamond then said "shoot." CO Brown then gave the phone back to me and the Duty Officer told me that she was coming to the prison. That was the end of the phone conversation.

8. In my interactions with CO Brown I did not give any instruction to CO Brown as to what to write in any report or statement that she made about the incident. I did instruct CO Brown to write exactly what she saw on the disciplinary report for offender Diamond.

9. After the phone call with the Duty Officer, I escorted offender Diamond to the medical unit to be checked, and let them know that Diamond was being taken to administrative segregation. An offender has to be checked by medical staff before being placed into administrative segregation. After the medical check I then escorted Diamond to a cell in G building which is the administrative segregation building. I then returned to N building to get Diamond's property to bring it to the cell in G building.

10. When I returned to N building and arrived at offender Diamond's cell I noticed that there was a rag in the cell door and that the door was not closing securely because of the placement of the rag. It was a white rag stuffed in the upper corner of the door. I took a photograph of the rag and made a call for a maintenance worker to come to the dormitory to remove the rag and work on the door to make sure that it would close securely.

11. CSP maintenance worker Joseph Rinker came to the N building and worked on offender Diamond's cell door. He removed the rag and when he did that the door closed and secured properly. I recall that he then stayed to assist me with the back gate which also needed work that day.

12. After discovering the rag in offender Diamond's cell door I wrote a Disciplinary Report for blocking the lock on the door. **Attachment 1** hereto is a true and correct copy of the DR which has the offense date of October 31, 2020 and which was prepared and signed by me on the same date. Attached behind the DR is a true and correct copy of the photograph of the rag that I took. The photograph accurately depicts the rag as I discovered it in the cell door. As shown on Attachment 1, I served this DR on offender Diamond on November 1, 2020.

13. **Attachment 2** and **Attachment 3** hereto are true and correct copies of two additional DRs that I also served on offender Diamond at the same time on November 1, 2020. These other two DRs were issued to offender Diamond also with the offense date of October 31, 2020. The first of these two DRs has the time of offense listed as 0840 hours and it relates to the sexual conduct described in paragraphs 6-8 above. The second one has the time of offense listed as 1235 hours and it concerns the unauthorized giving of contraband. All three of the DRs attached hereto have writing or information on them that was completed by others after I served the DRs on offender Diamond.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 5-3-2021


KHALIAH REEVES

ATTACHMENT 1

BIM

M/H

Gen POP
DISCIPLINARY REPORT

Adv/Wit

Attachment 11
SOP 209.01
11/06/2017

Coastal State Prion
INSTITUTION NAME

523
CODE #

TPM/MAX DATE

I. Offender: Diamond, Ashley Medium Security
Name: Last, First, M.I. ID Number

II. Offense Data:

A. Charge	Code	Plea	Finding	Charge	Code	Plea	Finding
1 Blocking Lock	C-8	NG	G				
2							
3							

October 31, 2020 1015hrs LT. Khaliah Reeves
Date Time of Offense Signature of Reporting Official

B. Factual Statement: On the above date and time, I, Lt. Reeves, entered N-Building B-Rang. to see why the door will not secure. There was a white rag stuffed in the corner of the door preventing the door from securing. Offender Diamond, Ashley #100290565 is the only offender assigned to it against policy to tamper with any lock or prevent the locking of any doors.

Reviewed by the appropriate supervisor: Sgt. Danielle Alexander 10-31-20
Signature M/o./day/year

C. Charges served on accused: 11-1-20 @ 0825 Khaliah Reeves
Mo./day/year/time Signature of Serving Official

III. Investigative Report:
A. Summary of Investigation: Investigation started 11/03/20 and complete 11/04/20, upon investigation I formally charge offender and recommend a hearing.

B. COII Morgan Odum 11/04/2020
Title Signature Mo./day/year

C. Advocate's Name: Gerlyn Pepin M/H counselor

IV. Hearing Officer's Recommendation:
Greatest High Moderate Low
Wm Cameron Mack 11-5-20
Signature Mo./day/year

V. Disposition of disciplinary hearing:
A. Justification for Findings: Offender Diamond, Ashley found guilty of charge due to supporting documentation.

B. Action Recommended: 60 Days LOP > C-8

C. TPM Extension: NA Isolation: NA

D. Offender advised of his/her right to appeal: Yes No

Wm Cameron Mack 1720 11-5-20
Signature of Disciplinary Hearing Officer Time of Hearing Mo./day/year

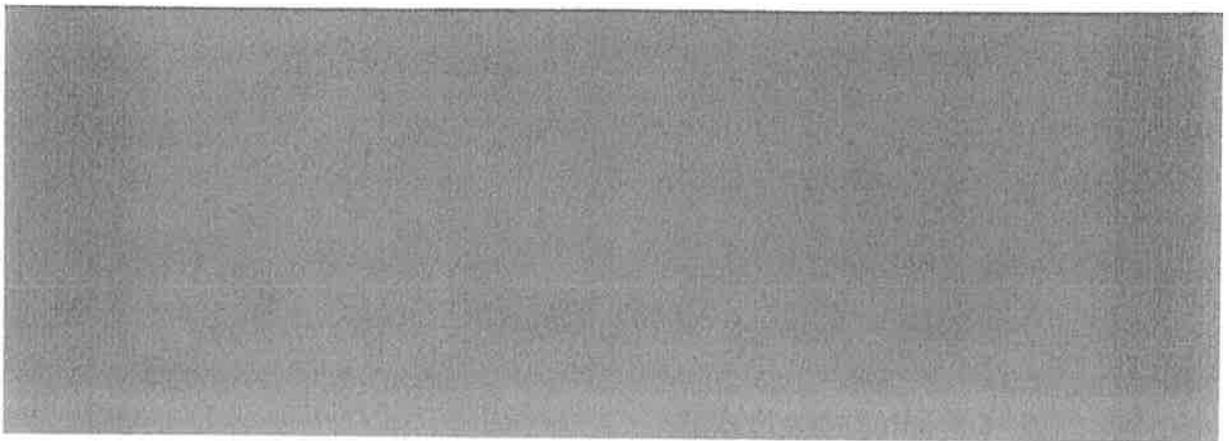
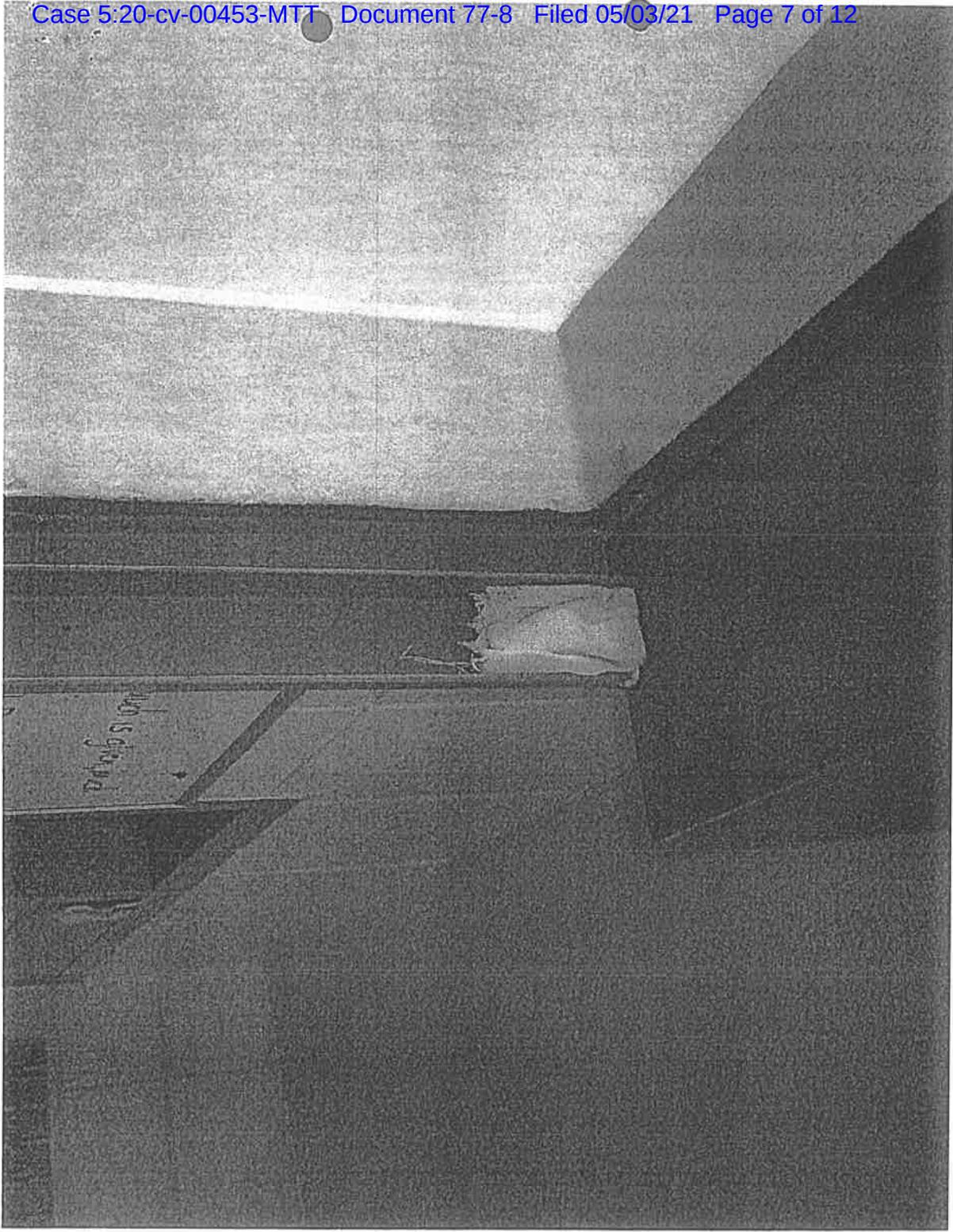
VI. Reviewing Officer: [Signature] DWS 11/06/2020
Signature Title mo. dy. year

4
1
2
3
4

RECEIVED

NOV 03 2020

O.I.D.



ATTACHMENT 2

ATTACHMENT 3

BIM

M/H

Co II
Adv/Wit

Gen Pop
DISCIPLINARY REPORT

Coastal State Prison 523
INSTITUTION NAME CODE # TPM/MAX DATE

I. Offender: Diamond, Ashley Medium 1000290565
Name: Last, First, M.I. Security ID Number

II. Offense Data:

A. Charge	Code	Plea	Finding	Charge	Code	Plea	Finding
1 Unauthorized giving of	D-1	NG	G				
2 Contraband to someone else							
3							

October 31, 2020 1235 hrs Tono Gordon, COI
Date Time of Offense Signature of Reporting Official

B. Factual Statement: On the above date and time, I, ofc. Gordon, was making rounds in G-Building A-Range when offender Diamond gave me paperwork and asked me could I give offender the Paperwork because its his legal mail. Along with the papers was a manilla envelop that wasn't stamped as Legal mail should. Upon looking at the paperwork, some of the papers were sentimental letters and pictures From offender Diamond to offender . Both offenders are in separate rooms and that is unauthorized.

Reviewed by the appropriate supervisor: Lt. Khaliah Reeves
Signature M/o./day/year

C. Charges served on accused: 11-1-20@0825
Mo./day/year/time Signature of Serving Official

III. Investigative Report:

A. Summary of Investigation: Investigation started 11/03/20 and complete on 11/04/20, upon investigation I formally charge offender and recommend a hearing.

B. Co II Morgan Odum 11/04/2020
Title Signature Mo./day/year

C. Advocate's Name: Gerlyn Pepin M/H Counselor

IV. Hearing Officer's Recommendation:

Greatest High Moderate Low
Signature: Lt. Carmen Mack 11-5-20
Mo./day/year

V. Disposition of disciplinary hearing:

A. Justification for Findings: Offender Diamond, Ashley was found guilty of charge due to supporting documentation.

B. Action Recommended: 60 Day LOAP > D-1

C. TPM Extension: NA Isolation: NA

D. Offender advised of his/her right to appeal: Yes No

Signature of Disciplinary Hearing Officer: Lt. Carmen Mack 17:00 11-5-20
Time of Hearing Mo./day/year

VI. Reviewing Officer:

Signature Title: DWS 11/04/2020
mo. dy. year

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